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ABSTRACT

Presented in this bulletin is the test of the hearing before the Conservation and Natural Resources Subcommittee of the Committee on Government Operations, United States House of Representatives, ninety-first Congress, concerning a national inventory of industrial wastes. The hearing was held September 17, 1970, to examine the long delay of the executive branch in instituting a much-needed inventory of industrial wastes, and in utilizing the inventory to facilitate enforcement of the Refuse Act of 1899. Further, they sought to scrutinize what the Corps of Engineers is doing concerning enforcement of the Refuse Act and how the Interior Department's inventory relates to the Corps' program. Statements and letters are submitted for the record by members of the Federal Water Quality Administration (FWQA), Department of the Interior, Corps of Engineers, and Bureau of the Budget. Appended material includes various correspondence between the subcommittee and federal agencies, policy statements and guidelines, and the proposed FWQA industrial waste questionnaire with accompanying instructions and definitions. Henry S. Reuss chaired the subcommittee. (BL)

ED 066290

THE ESTABLISHMENT OF A NATIONAL INDUSTRIAL WASTES INVENTORY

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HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS
SECOND SESSION

SEPTEMBER 17, 1970

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THE ESTABLISHMENT OF A NATIONAL INDUSTRIAL WASTES INVENTORY

THURSDAY, SEPTEMBER 17, 1970

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Henry S. Reuss (chairman of the subcommittee) presiding.

Present: Representatives Henry S. Reuss, Guy Vander Jagt, and Floyd V. Hicks.

Staff present: Phineas Indritz, chief counsel; David B. Finnegan, assistant counsel; Josephine Scheiber, research analyst; and J. P. Carlson, minority counsel, Committee on Government Operations.

Mr. Reuss. Good morning.

The Subcommittee on Conservation and Natural Resources of the House Committee on Government Operations will be in order for its hearing on a national inventory of industrial wastes.

In this hearing we shall examine into the long delay of the executive branch in instituting a much-needed inventory of industrial wastes, and in utilizing this inventory to facilitate enforcement of the Refuse Act of 1899.

We shall also examine what the Corps of Engineers is doing concerning enforcement of the Refuse Act and how the Interior Department's inventory relates to the corps' program.

It has been more than 7 years since this subcommittee and its predecessors first urged the executive branch to undertake, in cooperation with the industry, an inventory of industrial wastes. In that time none has been established, and the "7-year itch" of this subcommittee continues.

Instead, the Interior Department and the Bureau of the Budget, at the urging of industry, have toyed with the contents of a questionnaire form, while industrial pollution of our waters increases daily. This pollution of our waterways continues to degrade the environment, but the executive branch under several administrations refuses to utilize fully the tools at its command to bring it to a halt.

Like the Department of Justice, which has failed to follow the mandate of the 1899 Refuse Act to "vigorously" enforce the law against continuing sources of pollution, the Interior Department has failed to ask industry to supply voluntarily the industrial wastes data needed to help clean up our waterways.

Both measures, if fully utilized, could substantially aid in stemming the tide of pollution that threatens our environment and to do so with little cost to the Government and the American taxpayer.

Section 5(a) of the Federal Water Pollution Control Act has, since 1956, 14 years ago, authorized and directed the Secretary of the Interior to "conduct * * * investigations, * * * relating to the causes, control, and prevention of water pollution." It also authorizes him to "collect and make available, through publications and other appropriate means, the results of and other information" obtained from such investigations. Thus the Federal Water Quality Administration already has broad authority to establish an industrial wastes inventory.

Yet, instead of establishing a voluntary inventory of industrial wastes, Interior has been seeking new legislation, such as H.R. 15905 in this Congress, to require industry to provide the information it could get voluntarily. Further legislation may, in fact, be needed, but every day that Interior fails to utilize the voluntary method now available to it means another day of unchecked pollution of our waterways.

The Federal Water Quality Administration has considerable data on waste discharges from municipalities and from Federal installations. But it woefully lacks data on wastes discharged from industrial plants. It needs this data from all these sources to make meaningful estimates of the costs of clean water.

The volume of industrial waste is growing daily. Secretary Hickel on September 10, 1970, said in a news release that industries use "over 17 trillion gallons of water a year from ground and surface sources but treat less than 5 trillion of this total before discharges."

In addition, new kinds of industrial discharges create new forms of pollution.

Secretary Hickel's press release of September 10 noted that "55 new chemicals are developed each year by chemical and allied industries."

Congressman Robert E. Jones, of Alabama, the former chairman of this subcommittee, made the first request for an industrial wastes inventory in a letter of June 10, 1963, to the Secretary of HEW who then administered the water pollution control program.

In 1964, HEW, agreeing on the importance of the inventory, prepared a questionnaire form and requested the Budget Bureau to approve it under the Federal Reports Act. But the Budget Bureau refused to approve the form because many industries opposed it.

After eight major industries at the Lake Erie Water Pollution Control Conference agreed in 1965 to provide waste data, the Interior Department, in 1967, asked the Budget Bureau to approve a questionnaire revised to meet industry objections.

Again the Bureau refused approval, saying that the Interior Department should first complete two studies which Congress had requested in the Clean Water Restoration Act of 1966 concerning the costs of controlling pollution and possible economic incentives for industry to abate pollution.

These studies were completed in March 1968. They pointed out that the "lack of a current inventory of waste loadings from industrial sources" made it virtually impossible to develop adequate estimates concerning the costs of industrial pollution control.

Over 2 years ago, the House Committee on Government Operations issued its report (H. Rept. 90–1579, June 24, 1968) entitled "The Critical Need for a National Inventory of Industrial Wastes."

That report recommended that Interior establish a national industrial wastes inventory and that the Budget Bureau approve the questionnaire form proposed by Interior. The Bureau met in August 1968 with the Advisory Council on Federal Reports, which is organized, financed, and its members appointed by the chamber of commerce, the National Association of Manufacturers, and other national business organizations. When the council opposed the inventory, the Budget Bureau withheld its approval.

During 1969, this subcommittee corresponded with the Interior Department several times about the status of the inventory. In July 1969, we were told that the only remaining question was whether all data received would be held as confidential, and that this question would be resolved in a few weeks.

After further correspondence we learned early this year that the Interior Department was, in effect, abandoning the inventory recommended by the committee. In his letter of May 7, 1970, to us, Secretary Hickel said that Interior was going to reexamine "the plan" for such an inventory.

Congressman Vander Jagt, the ranking minority member joined with me on May 28 in letters to both Secretary Hickel and the Budget Bureau Director concerning this latest turn of events. On June 30, the Budget Bureau said it "suspended consideration of the survey" back in February 1970. We have not yet received a reply from Interior.

At this point I want to note that the Interior Department has failed to respond to many letters from our subcommittee. Several days ago we learned that the replies had been prepared long ago, but are apparently being held up in the office of Assistant Secretary Carl Klein. I shall now insert into the record a copy of our letter of September 10 to Secretary Hickel about his Department's failure to respond to our inquiries, which thereby delays the work of this committee.

I hereby, under the rule and without objection, incorporate into the record my letter of September 10, 1970, to Secretary Hickel.

(The September 10, 1970, letter from Chairman Reuss to Secretary Hickel follows:)

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 10, 1970.

Hon. WALTER J. HICKEL,
Secretary of the Interior,
Interior Department, Washington, D.C.

DEAR MR. SECRETARY: The subcommittee has written eight letters to you and the Commissioner of the Federal Water Quality Administration since last May to which we have received no reply. We understand that replies had been prepared by FWQA, but are being held up in the office of Assistant Secretary Carl Klein.

In view of the impending transfer of FWQA from the Interior Department to a new agency, we would appreciate prompt release of the replies to our letters. The matters raised in each involve issues which occurred while that agency continues to be in the Interior Department and subject to your policy and direction. Further, the delay in replying is substantially hindering the work of this subcommittee.

The eight subcommittee letters are as follows:

Four letters addressed to Commissioner Dominick (dated May 12, June 3, July 23, and July 31, 1970) concerning FWQA's activities in connection with enforcement by the Corps of Engineers of the 1899 River and Harbor Act (30 Stat. 1151; 33 U.S.C. 401, et seq.).

Two letters addressed to you (dated May 28 and July 23, 1970), concerning the failure of the Interior Department to establish a national industrial wastes inventory.

One letter addressed to Commissioner Dominick (dated July 28, 1970), concerning FWQA's investigation of mercury discharges.

One letter addressed to Commissioner Dominick (dated July 31, 1970), concerning FWQA's investigation of discharges of lead and arsenic into the Nation's waterways.

Sincerely,

HENRY S. REUSS,
Chairman.

[NOTE.—The correspondence referred to above is printed in the appendixes of this hearing record.]

Mr. REUSS. The Interior Department has repeatedly agreed that an industrial wastes inventory is needed. The Federal Water Quality Administration's report to Congress of March 1970 entitled "The Economics of Clean Water" stated (vol. 1, p. 8) that the "lack of an industrial waste inventory *precludes* meaningful improvement" of FWQA's estimate of the cost of clean water. FWQA on page 18 lays it on the line as follows, and I emphasize what it says:

"*The lack of reliable information on industrial water pollution control activities might be considered to be intolerable*, if the Nation had not become quite habituated to it. The guessing process has gone on for so long that it is considered quite normal; and *every effort to initiate an industrial waste inventory has been frustrated without noticeable public comment.*" (Italic supplied.)

Well, we're initiating what I hope will be "noticeable public comment" this morning on why "every effort to initiate an industrial wastes inventory has been frustrated."

To abate water pollution, we must have data as to the source, composition, quantity, frequency, treatment, and points of discharge of the wastes. As I said, Interior is getting that data for discharges from municipalities and Federal facilities, but not for the great discharges of wastes by industry into our streams and lakes. The executive branch has failed to embark on a program that would provide this data by voluntary means.

The present mercury crises could have been largely averted if industrial polluters and the Budget Bureau—my candidate for the environmental booby prize of the environmental decade—had not been so successful over the years in preventing a national inventory of just exactly what industries are dumping what into which of our Nation's waters.

If this national industrial pollution inventory had been implemented when first proposed almost a decade ago, mercury discharges would in all probability have been stopped or curtailed then.

Some argue that industry will not cooperate with the Government—that it will not provide this data fully and without restriction. We believe that if industry is sincere in wanting to abate its pollution, it will cooperate. We ought not to assume that industry will not cooperate.

There should be no further delay in our quest for environmental quality in the decade of the seventies.

We invited Mr. Charles W. Stewart, chairman of the Advisory Council on Federal Reports and president of Machinery & Allied Products Institute, to testify today because the council has dealt with this problem in great detail as industry's spokesman. We wanted the benefit of their advice on behalf of industry, just as the Budget Bureau has sought and received the council's advice.

On September 4, Mr. Stewart wrote to me declining to testify, or even to file a statement. He said that the members of the council "do not have special expertise in the field of pollution, and more particularly with respect to the collection and interpretation of data on industrial wastes."

Despite the fact that 27 members of the council, representing some of the Nation's biggest industries, met with the Budget Bureau in August 1968 to discuss the inventory and to express industry's view on it, Mr. Stewart wrote to us that the council "does not feel that in a congressional hearing it is the proper spokesman for industry at large.

I then wrote to Mr. Stewart on September 8, urging him to reconsider, and again inviting him to come to our hearing today to give us the benefit of the council's views.

But on September 11, he replied that his previous letter of refusal was "conclusive" and he again refused to accept our invitation to participate in hearing.

I will now put this correspondence into the record together with other correspondence which clearly shows the recalcitrance of the executive branch in initiating this inventory.

(The correspondence referred to above is reprinted in the appendixes of this hearing record.)

Mr. Reuss. Our first witness today is Under Secretary of the Interior Fred Russell. Would you step forward, Mr. Secretary?

He is accompanied by Hon. David D. Dominick, Commissioner, FWQA, and by Mr. Raymond C. Coulter, Deputy Solicitor of the Department of the Interior.

You are very welcome, gentlemen.

Secretary Russell, you have a prepared statement. Under the rule it will be received in full into the record, as will that of Mr. Dominick.

Will you gentlemen now proceed in your own way?

STATEMENT OF HON. FRED J. RUSSELL, UNDER SECRETARY OF THE INTERIOR

Mr. Russell. Mr. Chairman and members of this distinguished subcommittee, it is a pleasure to be here this morning to discuss with you a significant part of the national water pollution control effort—a voluntary national industrial waste inventory.

I have with me Commissioner David D. Dominick of the Federal Water Quality Administration and Raymond C. Coulter, Deputy Solicitor of the Department.

One of the major obstacles that we must overcome if we are to be successful in our fight against water pollution is the lack of comprehensive information concerning the full scope of the problem. A large remaining gap in the needed information is the extent and character of industrial waste which affects the quality of our Nation's waters. The Federal Water Quality Administration of the Department of the Interior will go forward with a voluntary industrial waste inventory to provide that needed information.

The information to be obtained from that inventory will provide the foundation for a substantial strengthening of Federal, State, and local efforts to meet water pollution problems realistically.

Commissioner Dominick will provide you with the details of our national inventory and with the relevant background information. We will be pleased to answer any questions you may have concerning the voluntary national industrial waste inventory.

Mr. Reuss. Thank you, Secretary Russell.

Before turning to Commissioner Dominick, let me say that we are heartened to hear you say that the Department of the Interior will go forward with a voluntary industrial waste inventory. We await its details with considerable interest.

But if our 7-year itch is to be relieved, this is a great way to do it, and I am delighted to hear this.

Mr. Dominick.

STATEMENT OF HON. DAVID D. DOMINICK, COMMISSIONER, FEDERAL WATER QUALITY ADMINISTRATION; ACCOMPANIED BY RAYMOND C. COULTER, DEPUTY SOLICITOR, DEPARTMENT OF THE INTERIOR, AND LOUIS E. DeCAMP, DIRECTOR, DIVISION OF TECHNICAL SUPPORT, FWQA

Mr. Dominick. Mr. Chairman, Congressman Vander Jagt, we are pleased to be here this morning to testify on the questionnaire which we propose to use to conduct the inventory.

As you have requested, I will clarify our past efforts and decisions which have now resulted in the implementation of this voluntary national industrial waste inventory.

During the past year we have carefully considered the feasibility of using industrial waste data obtainable through existing and planned departmental and State programs. We have concluded, on the basis of a pilot study and a staff review of available data sources, that an industrial waste inventory will substantially improve our capabilities for the enhancement of water quality.

This is especially true in the further development of a national comprehensive plan for water pollution abatement. With the quality of the Nation's environment immediately at stake, the data on industrial waste must be an integral part of realistic pollution control planning, and the ordering of priorities for the commitment of billions of dollars and substantial manpower to the water quality effort.

The data will be of great value in determining the costs necessary in a realistic pollution abatement effort. The data should prove particularly valuable to the Congress in developing new legislative measures and to us in effectively administering water quality programs. Industrial waste information is needed for effective basin-wide pollution abatement programs and for metropolitan and regional plans.

The data can significantly strengthen State pollution abatement programs in every aspect of planning, funding, constructing, and enforcement. Industrial effluent data will provide the foundation for establishment of effluent requirements proposed by the President as a part of the administration's water quality legislative program now pending before the Congress.

Refinement and improvement of our water quality standards and their enforcement are largely dependent upon the availability of industrial waste data. In short, the need for full industrial waste data pervades every major aspect of Federal and State efforts to prevent, control, and abate water pollution.

In July 1968, the then Secretary of the Interior wrote Chairman Jones that efforts were being made to establish an inventory and that an inventory questionnaire form had been submitted to the Bureau of the Budget.

That proposed form was considered at a subsequent meeting with interested Federal agencies and the Advisory Council on Federal Reports in the Bureau of the Budget. The principal issue raised by the Council was whether and to what extent the data obtained would be confidential. The Bureau of the Budget did not approve the questionnaire at that time.

The issue was not resolved.

In late 1969 and early 1970, legislative proposals and regulations were being formulated which related to the need for this inventory.

The President's message on the environment of February 10, 1970, dealt in part with industrial pollution and outlined a seven-point program to control water pollution from industrial as well as municipal wastes.

H.R. 15905, introduced on February 16, would provide for the establishment of State-Federal industrial effluent standards. The development of these standards, including implementation schedules by the States, will require considerable industrial waste information. In turn, the implementation of those standards will provide additional data.

In addition, construction grant regulations published in the Federal Register on July 2, 1970, call for basinwide plans which must include data concerning industrial effluent, where appropriate. Basinwide plans, therefore, will be an additional source of information on industrial wastes.

Certification of facilities under the Tax Reform Act of 1969 for the 5-year amortization of water pollution control facilities will also give us industrial waste data.

Another source of such data will be the discharge permits which the Corps of Engineers proposes to require of all dischargers.

While these proposals and programs were being developed, it was not clear to what extent a national industrial waste inventory would be needed. Accordingly, we deferred further action on the inventory.

It now appears, however, that with our other industrial effluent data sources, a voluntary industrial waste inventory is essential to project our needs and programs adequately. All the other sources of collecting industrial waste data have limitations—including substantial timelags—which make them inadequate as sources for a comprehensive national inventory.

The basin plan and regional or metropolitan plan regulations apply only to areas where waste treatment facility construction grant projects are contemplated. The data gathered through the tax certification of air and water pollution control facilities will pertain only to limited categories of industrial plants.

Effluent standards and the proposed Corps of Engineers permit program will have wider application, but as with the other sources, lead time to implement these programs would be a factor.

Effluent data is needed now. We can implement the national inventory now. Additionally, we believe that each industry which voluntarily completes the questionnaire will be prepared to meet the requirements of other programs necessitating effluent data.

Access to more comprehensive waste data will greatly facilitate the Department's planning and the establishment of national priorities for pollution abatement.

The industrial waste program is closely linked with municipal waste treatment.

Half or more of the liquid wastes of seven of the major water-using manufacturing sectors—food processing, textiles, rubber and plastics, machinery, electrical machinery, and transportation equipment—is discharged into public sewers and treated in municipal waste treatment facilities.

The largest manufacturing users of water—pulp and paper, chemicals, and primary metals—generally cannot use public facilities because of location, process or waste magnitude. Therefore, only about one-fourth of all manufacturing wastes are treated in public facilities.

However, current estimates of the relative strength of municipally treated wastes from domestic and industrial sources indicate that about 45 percent of the biochemical oxygen demand of municipal sewage is of industrial origin. In view of the desirability of regional approaches to industrial and municipal waste treatment, the industrial factor in municipal waste treatment plants will undoubtedly increase in the future.

The data that will be supplied by a national industrial waste inventory will be of considerable help in the development of basinwide plans recently required by regulations.

When those basinwide plans have been developed, they will provide additional complementary information.

The Department has studied the costs involved in industrial waste treatment. The most recent assessment, pp. 62–64 of "The Economics of Clean Water, 1970," a report to the Congress by the Secretary of the Interior, indicates that the most probable value of industrial capital expenditures over the next 5 years, 1970 to 1974, for maintenance of Federal and State water quality standards is $3.3 billion, with up to $2.1 billion additional required for installation of waste water cooling facilities.

Annual operating and maintenance charges associated with these investments, and with the operation of facilities currently in place, are estimated to rise from about $600 million in the current year to over $1 billion by 1974.

The most comprehensive discussion of this matter is reported on pp. 57–153, volume II, of "The Cost of Clean Water," a report presented by the Secretary of the Interior to the Congress on January 10, 1968.

The figures in the 1968 "The Cost of Clean Water" are based on the 1963 Census of Manufacturers in which the extent of industrial water use was identified.

Estimates were then projected from that information together with known characteristics of waste water and pollutants associated with the various industries. In view of these sources and procedures, the resulting data were not complete.

The additional data supplied by the national industrial waste inventory will provide a more complete and reliable cost figure for industrial waste treatment needs.

Secretary Hickel expressed some of these concerns in a letter addressed to you, Mr. Chairman, on May 7 of this year. At that time, the Secretary also outlined a pilot study of the availability of industrial waste data for selected river basins in each of our nine regions.

That study has clearly demonstrated the inadequacy of data from existing sources and the absolute necessity for a comprehensive national industrial waste inventory now.

On that basis, the Department of the Interior has developed the questionnaire which I have presented to you today. The questionnaire informs the respondents of the following terms of confidentiality:

First, submission of the information requested is completely voluntary.

Second, such information will be considered confidential within the meaning of 18 U.S.C. 1905 which provides penalties for unlawful disclosure of trade secrets and other classes of confidential information. Accordingly, release of such information will, with certain exceptions, be limited to statistical summaries which do not identify individual plants.

Third, the exceptions for which information identified with individual plants may be released are described as including all those needed to carry out the provisions of the Federal Water Pollution Control Act. These include specifically sections 3(a) and 3(c) of the act regarding development and support of water pollution abatement programs; sections 5 and 6 relating to causes, control and prevention of pollution, and section 10, concerning water quality standards determinations and abatement actions.

Fourth, we provide for full availability of information to State, interstate, and local water pollution control officials and agencies and to Federal officials and agencies, subject to the safeguard that such information will not be disclosed unlawfully.

Mr. Chairman, we believe that American industry increasingly recognizes the problem of environmental pollution and the need and benefits of a truly comprehensive national industrial waste inventory. The questionnaire that we have presented to you today provides us with the means to achieve that comprehensive industrial waste inventory now.

Thank you, Mr. Chairman.

Mr. REUSS. Thank you, Commissioner Dominick.

Needless to say, we are—certainly I am—most delighted that after 7 long years the questionnaire which we have been asking for will finally be circulated to industry.

When are you going to do this?

Mr. DOMINICK. We will do this in the immediate future.

Mr. REUSS. Within the next month?

Mr. Dominick. Yes, sir.

Mr. Reuss. I am delighted to hear that.

I also have already commented favorably on the report of your FWQA to Congress earlier this year in which it was said that lack of an industrial waste inventory precludes meaningful improvement as far as FWQA is concerned.

It then goes on to say, and I quote: "Every effort to initiate an industrial waste inventory has been frustrated."

Who has done the frustrating? Certainly not this committee.

Mr. Dominick. No, not your committee, Mr. Chairman.

Mr. Reuss. Name the frustrators by name.

Mr. Dominick. The problem of achieving agreement within the executive branch on the form and the procedures for implementing a voluntary industrial waste inventory has been one of continuing breakdown in communication, continuing inability to find agreement on essential portions and procedures to be followed.

I think the basic point that should be made here today is that agreement finally has been reached, that we are presenting to the committee and to industry a positive program which we intend to implement immediately, and that after this long delay we are now proceeding, as I say, in a positive fashion.

Mr. Reuss. My question is: Would you please identify the frustrators by name?

Mr. Dominick. Mr. Chairman, I don't see that identifying either persons or officials within the executive branch serves any real purpose at this point in time.

Mr. Reuss. I can suggest one purpose. The public would like to know who the marplots are so that in ways open in a democracy they may do something about them.

So would you identify them—names, addresses, titles?

Mr. Russell. Well, Mr. Chairman, hasn't Mr. Dominick suggested that there have been differences of opinion between the parties? Who is to say who is wrong? They have reconciled their differences.

Mr. Reuss. Right. I would say the public should be entrusted to say who is wrong.

Mr. Russell. Anybody who doesn't——

Mr. Reuss. All we want is their names. The names of Russell and Dominick are held in honor here this morning because we like very much your decision to get out this long delayed questionnaire within the next month.

But without asking you to turn state's evidence against colleagues in the administration or in past administrations, we would like to know, since it was in your report that frustrators are at large, who they are.

Mr. Russell. Well, anybody who doesn't agree with me is wrong. That's the attitude I think that most people have, isn't it?

Mr. Reuss. Well, I would think that a large percentage of the public would be willing to hold the view that anybody who tried to frustrate the issuance of this inventory over the last 7 years has been in error. And in a democracy it's not out of order to inquire as to their names and addresses.

Mr. RUSSELL. Well, isn't what you mean, Mr. Dominick, that the conclusion has been frustrated by difference of opinion which finally is reconciled?

Mr. REUSS. Well, I don't want to be too inquisitorial. We will leave a sufficient amount of white space in the record so that you may within the next few days fill in the names, titles, and addresses of those who over the last 7 years have frustrated the industrial wastes inventory.

(NOTE.—Commissioner Dominick's response of September 28, 1970, and the enclosures transmitted therewith, follow:)

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., September 28, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This is in reply to your letter to Secretary Hickel of May 28, 1970, and your letters of July 23, 1970, to Secretary Hickel and me, concerning a national inventory of industrial wastes.

I believe Under-Secretary Russell, Deputy Solicitor Coulter, and I answered the questions raised in your letters when we appeared before you and the other members of the Subcommittee on Conservation and Natural Resources. We appreciate the opportunity you have afforded us to describe our national industrial waste inventory in terms of its need, its implementation, and its anticipated benefits.

During the hearings you referred to a statement which appeared in the Economics of Clean Water (vol. I, p. 18) that "every effort to initiate an industrial waste inventory has been frustrated." You asked me to name the "frustrators." The frustrations to which the report refers were the result of differences of opinion and of the delays occasioned by a consideration of options and alternatives and the resolution of those differences. The report simply means that there were frustrations, not individual frustrators.

Members of my staff have since met with members of the subcommittee staff to refine the statement to be included in the questionnaire concerning the use of the solicited data.

Copies of the legal opinions of the Department's Solicitor which you requested are enclosed.

In answer to your additional request, three copies of the proposed regulations regarding certification of facilities under the Tax Reform Act of 1969 are also enclosed. These proposed regulations were published in the Federal Register on June 10, 1970. We plan to republish these regulations in final form, coordinated with the regulations of the Department of Health, Education, and Welfare concerning the certification of air pollution control facilities.

As we stated before your subcommittee, we will keep you apprised of our progress in the implementation of the national industrial waste inventory.

Sincerely yours,

DAVID D. DOMINICK,
Commissioner.

Enclosures—Copies of Solicitor's opinions of September 1, 1970, and three copies of 18 CFR, pt. 602.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., September 1, 1970.

Memorandum to Commissioner, Federal Water Quality Administration.
From: Solicitor.
Subject: Questions posed by Representatives Reuss and Vander Jagt relative to requesting information about waste discharges.

In your memorandum dated June 16, 1970, you requested my views on two questions raised by Representatives Reuss and Vander Jagt in their letter to the Secretary dated May 20, 1970.

The questions concern section 601.32 of the regulatoins on section 8 construction grants which were published in the Federal Register as proposed rulemaking on March 31, 1970 (35 F.R. 5346). We note that the proposed rules were revised and published in the Federal Register as final rules on July 2, 1970 (35 F.R. 10756). There were no substantial revisions in that portion of the regulations which are the subject of the Reuss-Vander Jagt inquiry.

QUESTION 1

The first question is the legal basis upon which the Commissioner (or, more basically, the Secretary) may request the information listed in subparagraphs (1) through (6) of 18 CFR 601.32(b)—relating primarily to the source, volume, and composition of waste discharges—before, awarding a grant for the construction of a treatment works under section 8 of the Federal Water Pollution Control Act.

My opinion is that since the information is necessary to enable the Secretary adequately to perform his functions under the act, his authority to request the information is implicit in the act.

Subsection 8(c) of the act provides that in considering the desirability of projects and of committing Federal funds to their construction, the Secretary is required to give consideration to the public benefits to be derived from the construction, and to the relationship of the ultimate cost of constructing and maintaining the works to the public interest and public necessity for the works. The plain object of such an analysis is to attempt to get the best treatment, and the best results in terms of enhancement of water quality, for the least amount of money. Implicit in the statute is the notion that funds are not unlimited and that they should be spent where they will do the most good.

Experience has shown that a proposed project cannot be adequately evaluated in terms of optimum siting, adequacy of design, efficiency of operation, and effectiveness in enhancing the quality of the receiving waters, unless extensive information is obtained about the source, volume, and composition of all significant waste discharges into all or portions of the waters in question.

Since the Secretary is required by the act to make a public benefit analysis of a proposed project before committing Federal funds to that project, and since such an analysis requires that the obtain the information in question, the conclusion is inescapable that he not only has authority to request the information, but may properly deny funding if it is not forthcoming.

QUESTION 2

The second question is whether the provisions of 44 U.S.C. 3511 would prohibit the Secretary from denying a grant application on the ground that the State or municipality concerned refused or failed to provide the requested information on waste discharges.

44 U.S.C. 3511 is as follows:

> "A person failing to furnish information required by an agency shall be subject to penalties specifically prescribed by law, and no other penalty may be imposed either by way of fine or imprisonment or by the withdrawal or denial of a right, privilege, priority, allotment, or immunity, except when the right, privilege, priority, allotment, or immunity is legally conditioned on facts which would be revealed by the information requested."

My opinion is that 44 U.S.C. 3511 would present no bar to denial of the grant application.

An examination of its legislative history is useful to an understanding of 44 U.S.C. 3511.

44 U.S.C. 3511 is section 8 of the Federal Reports Act of 1942 (56 Stat. 1078). This act was enacted to curb certain practices of Federal agencies such as the War Production Board and the Office of Price Administration, during the early part of World War II, in collecting information from businesses and private citizens considered germane to commodity rationing, the setting of price ceilings, and other wartime economic policies. During debate on the bill, Senator Vandenberg of Michigan referred to the "almost insufferable burden upon American business in respect to questionnaires, reports, regulations, and rules which are descending upon it like a snowstorm, 7 days a week."[1] Section 1 of the act states

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[1] Congressional Record, vol. 88, p. 9078 (Nov. 23, 1942).

the congressional policy that information needed by Federal agencies should be obtained with a minimum burden upon businesses and others required to furnish the information, at a minimum cost to the Government, and without unnecessary duplication of effort.

Section 8 was not included in the bill enacted by the Senate, but was the subject of an amendment introduced on the floor of the House. Its purpose, according to its sponsor (Representative Howard W. Smith of Virginia), was to curb the practice of some agencies of imposing extralegal penalties for violations of their directives—such as the denial of ration cards or the right to buy certain rationed commodities—in addition to or in lieu of the fine and imprisonment authorized by statute.[2]

My reasons for believing that 44 U.S.C. 3511 would not present a bar to denial of a grant application are as follows:

1. It is not believed that the Federal Reports Act of 1942 has any application to the Secretary in his administration of the treatment works construction grants program. As discussed above, the situation with which that act was designed to deal bears no resemblance whatever to the FWQA's construction grant activities.

2. Even if 44 U.S.C. 3511 did apply to the FWQA's construction grant activities, denial of a grant application due to failure to supply the requested information would not constitute a violation of 44 U.S.C. 3511 since a construction grant is not a "right" or "privilege." Whether or not construction grants are awarded is entirely discretionary with the Secretary.

3. Even if 44 U.S.C. 3511 applied, and it were held that a construction grant constitutes a "right" or "privilege," denial of the application for failure to supply the requested information would be proper because the right to the grant would be "legally conditioned on facts which would be revealed by the information requested." In other words, since, as discussed in connection with question 1, the Secretary has authority to ask for the information, and since the information is relevant to the decision of whether or not to award the grant, the application may be denied if the information is not supplied.

MITCHELL MELICH,
Solicitor.

PROPOSED RULE MAKING—DEPARTMENT OF THE INTERIOR, FEDERAL WATER QUALITY ADMINISTRATION

[18 CFR Part 601]

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Notice of Proposed Rule Making

Notice is hereby given that the Secretary of the Interior pursuant to the authority in section 6, 70 Stat. 502, as amended, 33 U.S.C. 466e, proposes to amend Subpart B of Part 601 by revising § 601.25(b).

The proposed amendment is intended to further strengthen the waste treatment facility construction grant program by restating the adequate treatment requirement consistently with water pollution control advances in related areas. The improvement and modernization of the proposed treatment requirement is essential to an effective, consistent cooperative effort to achieve and implement water quality standards and to enhance water quality. The proposed treatment requirement is expressed in terms of uniform minimally acceptable performance of a treatment work. The design, plans and specifications of a proposed treatment plant, however, must take into account seasonal temperature fluctuations and other factors which will affect performance, so as to satisfy the Commissioner that the minimum level of treatment will be obtained year around.

Interested persons may submit, in triplicate, written data, or arguments in regard to the proposed regulations to the Secretary of the Interior, Washington, D.C. 20240. All relevant material received not later than 45 days after publication of this notice will be considered.

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[2] See remarks of Representative Smith in Congressional Record, vol. 88, pp. 9164–9165 (Nov. 27, 1942) and pp. 9435–9436 (Dec. 10, 1942).

Section 601.25 would be amended by revising paragraph (b) thereof as follows:

§ 601.25 Grant limitations.

* * * * * * *

(b) No grant shall be made for any project unless the applicant provides assurance satisfactory to the Commissioner that the proposed treatment works, or part thereof, will adequately treat sewage or industrial wastes of a liquid nature in order to abate, control, or prevent water pollution. No such assurance will be satisfactory unless it includes assurance that the treatment works or part thereof, if constructed, operated and maintained in accordance with plans, designs and specifications, will result in: (1) Substantially complete removal of all floatable and settleable materials; (2) removal of not less than 85 percent of biochemical oxygen demand, determined on a monthly average, taking into account design flow, temperature fluctuations and such other factors as the Commissioner deems appropriate; (3) disinfection or other methods to produce substantially complete reduction of micro-organisms; (4) such additional treatment as may be necessary to meet applicable water quality standards, recommendations of the Secretary or order of a court pursuant to section 10 of the Federal Act: *Provided*, That in the case of a project which will serve a municipality with a population equivalent of 10,000 persons, or less, the Commissioner may waive the assurance of subparagraphs (2) and (3) of this paragraph if he determines that different methods or techniques of treatment are necessary or appropriate: *Provided further*, That in the case of a project which will discharge wastes into open ocean waters through an ocean outfall, the Commissioner may waive the requirements of subparagraphs (2) and (3) of this paragraph if he determines that such discharges will not adversely affect the open ocean environment and adjoining shores.

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Dated: June 4, 1970.

WALTER J. HICKEL,
Secretary of the Interior.

[F.R. Doc. 70-7159; Filed June 9, 1970; 8:47 a.m.]

[18 CFR Part 602]

CERTIFICATION OF FACILITIES

Notice of Proposed Rulemaking

Notice is hereby given that the Secretary of the Interior pursuant to the authority in section 301, 80 Stat. 378, 5 U.S.C. 301, proposes to revise Part 602.

The proposed revision is intended to implement section 704 of the Tax Reform Act of 1969, Public Law 91-172, which provides for the amortization of air and water pollution control facilities. The proposed regulations provide requirements and procedures for obtaining certifications from the Secretary for purposes of the amortization.

Interested persons may submit, in triplicate, written data or arguments in regard to the proposed regulations to the Secretary of the Interior, Washington, D.C. 20240. All relevant material received no later than 45 days after publication of this notice will be considered.

PART 602—CERTIFICATION OF FACILITIES

Sec.
602.4 Applications.
602.2 Definitions.
602.3 General provisions.
602.4 Applications.
602.5 State certification.
602.6 General policies.
602.7 Requirements for certification.
602.8 Cost recovery.
602.9 Notice of intent to certify.

AUTHORITY: The provisions of this Part 602 issued under sec. 301, 80 Stat. 378; 5 U.S.C. 301.

§ 602.1 Applicability.

The regulations of this part apply to certifications by the Secretary under section 169 of the Internal Revenue Code of 1954, as amended.

§ 602.2 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) "Federal Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.).

(b) "State water pollution control agency" means the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for enforcing State laws relating to the abatement of water pollution, it means such other State agency.

(c) "Applicant" means any person who files an application with the Secretary for certification that property is in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Act:

(d) "Secretary" means the Secretary of the Interior.

(e) "Facility" means property for which certification is sought under this part.

§ 602.3 General provisions.

(a) Applicants shall file applications in accordance with this part for each facility for which certification is sought.

(b) Applications shall be submitted to the Secretary through the State water pollution control agency.

(c) No certification shall be rendered for any facility prior to the commencement of operation of such facility in accordance with the application.

(d) An amendment to an application shall be submitted in the same manner as the original application and shall be considered a part of the application it amends.

(e) No certification shall be rendered by the Secretary for any facility prior to the certification of such facility by the State water pollution control agency in accordance with this part.

(f) The Secretary shall notify applicants whether or not a certification is issued. If the Secretary determines not to issue a certification he shall advise the applicant of the reasons therefor.

§ 602.4 Applications.

Applications for certification under this part shall be submitted in such manner as the Secretary may prescribe and shall include the following information:

(a) Name and address of the applicant and Internal Revenue Service Identifying Number.

(b) Description of the facility for which certification is sought (including a copy of schematic or engineering drawings), and a description of the function and operation of such facility;

(c) Address of facility location;

(d) Description of the industrial operation in connection with which such facility is or will be used;

(e) Description of the effort of such facility in terms of quantity and quality of wastes removed, altered, or disposed of by such facility;

(f) Dates of construction and operation of such facility;

(g) The amount of profits to be derived through recovery of wastes or otherwise in the operation of the facility;

(h) Such other information as the Secretary deems necessary for certification.

§ 602.5 State certification.

No application shall be considered by the Secretary until it has been submitted to the State water pollution control agency, and unless the application is accompanied by a State certification that the facility described in such application is in conformity with the State program and requirements for control of water pollution, including applicable water quality standards and effluent standards. Such certification shall be executed by an agent or officer authorized to act on behalf of the State water pollution control agency and accompanied by evidence of such authority.

§ 602.6 General policies.

The general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Act are: To enhance the quality and value of our water resources; to eliminate or reduce the pollution of interstate waters and tributaries thereof; to improve the sanitary condition of surface and underground waters; to conserve such waters for public water supplies, propagation of fish, and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses; and to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution.

§ 602.7 Requirements for certification.

(a) Except as provided in § 602.8, if the Secretary determines that a facility, for which application for certification has been made in accordance with the provisions of this part, is in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Act, he shall so certify.

(b) In determining whether a facility complies with applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Act, the Secretary shall consider whether such facility is consistent with and meets the requirements of the following factors, insofar as they are applicable to the waters which will be affected by the facility:

(1) Water quality standards, including water quality criteria and plans of implementation and enforcement established pursuant to section 10(c) of the Federal Act.

(2) Recommendations issued pursuant to section 10 (e) and (f) of the Federal Act.

(3) State water pollution control programs established pursuant to section 7 of the Federal Act and regulations under Subpart A, Part 601 of this chapter;

(4) Comprehensive water pollution control programs established pursuant to section 3 of the Federal Act;

(5) State, interstate, and local standards and requirements for the prevention, control, and abatement of water pollution.

§ 602.8 Cost recovery.

Notwithstanding any other provisions of this part, the Commissioner will not certify any facility to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such facility, its costs will be recovered over its actual useful life.

§ 602.9 Notice of intent to verify.

On the basis of applications submitted prior to the construction and operation of a facility, the Commissioner may notify applicants that such facility will be certified if:

(a) The Commissioner determines that such facility, if constructed and operated in accordance with such application, will be in compliance with the requirements identified in § 602.7, and in furtherance of the general policies identified in § 602.6; and if

(b) The application is accompanied by a statement from the State water pollution control agency that such facility, if constructed and operated in accordance with such application, will be in conformity with the State program or requirements for abatement or control of water pollution.

Dated: June 5, 1970.

WALTER J. HICKEL,
Secretary of the Interior.

[F.R. Doc. 70-7198; Filed June 9, 1970; 8:50 a.m.]

Mr. REUSS. Let me now turn to the details of the questionnaire. This relates to pages 6 and 7 of your testimony, Mr. Dominick.

You say first that the submission of the information requested is completely voluntary. Let me say that that's completely agreeable to this committee. We have suggested that it be completely voluntary. Anybody unwilling to give you the information on what poisons, toxins or pollutants are pouring into our streams and lakes would not, under this questionnaire, be compelled to provide it.

The second condition is one that concerns me, however, and I will read it:

> Second, such information will be considered confidential within the meaning of 18 U.S.C. 1905 which provides penalties for unlawful disclosure of trade secrets and other classes of confidential information. Accordingly, release of such information will, with certain exceptions, be limited to statistical summaries which do not identify individual plants.

Well, 18 U.S.C. 1905 prohibits unlawful disclosure not only for trade secrets, which I agree should be kept confidential, although I doubt any will be threatened by the revelation of pollution data. But it also applies to disclosure of just about everything—processes, operations, style of work, or apparatus.

And do I understand that this questionnaire which you propose to send out will—in the case of an industry which is pouring, let us say, mercury into an intrastate stream—not let the public in on the secret of who is doing this: and the public thus will be unable to know whether the U.S. attorney is following the mandate of Congress under the 1899 Refuse Act to "vigorously" prosecute the pourer-in of the mercury?

If so, I hope we don't have to wait another 7 years to give the public that information.

What's with it?

Mr. Dominick. I think the direct answer to your question is no.

Mr. Reuss. I don't know whether that is a good answer or not. No what? No, the miscreant's identity is to be kept secret? Or, no, it is to be made public?

Mr. Dominick. As I understand the provisions of 18 U.S.C. 1905, only that portion of the information which can be interpreted as falling under the definition of trade secrets, et cetera, is to be treated as confidential within the provisions of that section.

Mr. Reuss. I am delighted to hear that, except for the "et cetera." What have we got in there?

Mr. Dominick. Since this whole question of confidentiality is one great legal complexity, I'd like to have the Deputy Solicitor speak to that question.

Mr. Reuss. Mr. Coulter, would you, please, I hope, confirm in the most vigorous manner that you aren't going to cover up the industrial miscreants who pour poisons into our waters except where there is a trade secret involved?

Mr. Coulter. Well, Mr. Chairman, I would affirm what the Commissioner has said, that public disclosure of miscreants will not be affected here by this.

If you remember, section 1905 provides among other things for prohibition on disclosure of processes, trade secrets—I can't remember the entire list.

Mr. Reuss. I have it in front of me.

Mr. Coulter. Have you? Oh, here it is. Operations. Style of——

(18 U.S.C. 1905 follows:)

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

SEC. 1905. *Disclosure of confidential information generally.*

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment. (June 25, 1948, ch. 645, 62 Stat. 791.)

Mr. REUSS. It says woe betide the man who unlawfully discloses information which relates to, and now I'm quoting, "trade secrets"—and I interpolate "so far so good"—but then it goes on to say "processes, operations, style of work or apparatus."

Well, now, the pouring of mercury or arsenic or anything else into our streams is a process, an operation, a style of work. Are you going to participate in covering that up?

Mr. COULTER. No; I don't think so, Mr. Chairman. As a matter of fact, section 1905 includes, among other things, an exception wherein this information cannot be disclosed except where otherwise authorized by law. We conclude that the various acts that constitute the water pollution control law provide us with sufficient authority to take appropriate action in any case involving pollution.

Mr. REUSS. Yes; but what about acts like the Refuse Act of 1899 which mandates the U.S. attorney to "vigorously"—that's Congress' word, not mine—prosecute the dischargers of pollutional material? Are you going to suppress the evidence that you obtain from these questionnaires?

Mr. COULTER. No; we are not. In that context of actually prosecuting a given polluter, we would be utilizing this information, and, as a matter of fact, this is so stated in paragraph 3 that the Commissioner read of our confidentiality statement where we would be utilizing this information for that very purpose.

Mr. REUSS. Yes. Let's come to that. And I'll read you paragraph 3 which has to do with the exceptions to the rule of confidentiality.

Mr. COULTER. Could I emphasize one other thing, Mr. Chairman, before you do?

Mr. REUSS. Surely.

Mr. COULTER. You will recall that the Commissioner stated this was a voluntary disclosure.

Mr. REUSS. Right.

Mr. COULTER. And, being voluntary, the company is able to withhold certain information, if they so desire, on filling out the questionnaire. But to the extent that they provide that information, we are entitled to use it, and this statement will be made to them as a part of the questionnaire.

Mr. REUSS. Surely. But let us now turn to the exceptions and I will read from Mr. Dominick's statement:

> Third, the exceptions for which information identified with individual plants may be released are described as including all these needed to carry out the provisions of the Federal Water Pollution Control Act. * * *

Well, that's interesting, but since the Federal Water Pollution Control Act really doesn't do very much about intrastate pollution, it doesn't mean very much.

In the case given by me, where a polluter pours mercury into an intrastate stream—and many of our streams are intrastate—and confesses to you that he has done so, how is the public ever going to know whether the U.S. attorney is doing his job to vigorously prosecute this endangerer of the life and limb of our people?

Mr. COULTER. Well, Mr. Chairman, perhaps I don't understand your question. But let me refer you to paragraph 4 of this confidentiality statement which provides, among other things, that information that we develop in connection with this inventory will be made available to Federal, State, and local agencies that also are charged with responsibility under various acts for pollution control.

Mr. REUSS. True. But the thing which causes the public—the people who elect or don't elect us—for example, to be irate about the environment today is that the Federal, State, and local water pollution control officials have been sitting there not doing very much, and the public has lately been utilizing such methods as are at hand for prodding public officials into doing their statutory duty.

If you conceal from the public the fact that *x* plant is pouring mercury, arsenic, and cyanide into Nine Mile Creek at the rate of hundreds of gallons a day, and if the Federal, State, and local officials are as lackadaisical as they have frequently been in the past, how is the public to know whether its servants are doing their duty or not?

Mr. COULTER. Well, Mr. Chairman, you are assuming that we are not going to tell them. But I think the Commissioner has indicated to you—and I would say the same thing—that where we have a known polluter, that information is going to be made available to the public as far as the name is concerned. Now, with regard to trade secrets and processes——

Mr. REUSS. Nobody suggests that you should make public trade secrets but just——

Mr. COULTER. That's what I was going to——

Mr. REUSS. It isn't a trade secret if factory *x* discharges cyanide, arsenic, and mercury into Nine Mile Creek as far as I can see. Yet in your submission here—and let me follow this through again——

Mr. COULTER. Certainly.

Mr. REUSS (continuing). You say, one, you are going to consider it confidential if it's a trade secret, which is fine, or if it otherwise comes within section 1905, which relates to processes and operations.

Now, it seems to me that the discharge of mercury, cyanide, and arsenic into Nine Mile Creek is an operation and a process of the plant and so that this will start out being secret and confidential.

Then we come to the exceptions, and exception No. 1 is that you won't make it secret if it is needed to carry out the Federal Water Pollution Control Act. But the trouble is the Federal Water Pollution Control Act doesn't have much of anything to do with pollution on intrastate Nine Mile Creek.

Then you say, well, you're going to provide this information to State, interstate, and local water pollution control officials. But they are the people who have been sitting on their oars not doing anything about it for, lo, these many years. And the public—apprehensive about big government in general, and particularly upset at the hanky-panky that has been going on for so many years between government and polluters—will be left out of it. This is what concerns me. And while your answers, both Mr. Coulter and Mr. Dominick, have been somewhat reassuring, they collide with the questionnaire and what you say here in your statement. I think we have to get that straightened out.

Mr. **Coulter.** I don't consider they collide, Mr. Chairman, Let me comment on several aspects.

The Congress has before it presently a legislative program suggested by the administration which, if enacted, I am sure would be highly beneficial with respect to meeting the problem that you suggest with regard to Nine Mile intrastate creek.

Second, the provisions of section 1905 have not been adequately construed by the courts. But to the extent that public disclosure was necessary under any one of these exceptions, I think we would have the ability to do so.

Mr. **Reuss.** But why in your presentation here do you refer to section 1905? Why don't you simply say that, one, submission of the information is voluntary and, two, this information will be considered confidential to the extent and only to the extent that it involves trade secrets—period?

Mr. **Coulter.** Well, No. 1, Mr. Chairman, section 1905 isn't related only to trade secrets, and, second, section 1905 is a criminal statute with respect to employees of the Federal Government, and we have to recognize statutory enactment. We can't do anything else.

Mr. **Reuss.** Mr. Russell, if I just could comment on that before recognizing you, section 1905 certainly doesn't have anything to do with a Federal employee who releases information which he obtains voluntarily from an industry which has been warned that this information will be released. If they don't want to give that information, that's their business. They don't need to. But if they do, I can't imagine that there's any Federal law—certainly not section 1905—which prevents telling the public that XYZ company has now furnished the interesting information that it has been dumping mercury, cyanide, and arsenic into Nine Mile Creek.

Mr. **Coulter.** Well, Mr. Chairman, if we examine 1905, and let me read it here, it says:

> Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties * * *.

There's nothing in that section that says voluntary or otherwise, Mr. Chairman. It's any information coming to him in the course of his official duties.

Mr. **Reuss.** Let me reread to you the law. What you have just read in section 1905 does make it illegal, and I think properly so, for a Government employee acting on his own and without authority of law to release information which he acquires in the course of his duties.

Mr. COULTER. Whether voluntarily or given otherwise.

Mr. REUSS. Right. Section 1905 prohibits disclosures to the extent not authorized by law. Now, let's look at what the law authorizes. And I call your attention to the Federal Water Pollution Control Act, section 5, subsection (c), which says, "The Secretary shall * * * collect and disseminate basic data on chemical, physical, and biological water quality and other information insofar as such data or other information relate to water pollution and the prevention and control thereof."

Now, what clearer authorization by law could we have than that?

So why go around Robin Hood's barn and talk about keeping confidential everything which is mentioned in section 1905? Because section 1905 is, of course, to be read in connection with section 5(c) of the Federal Water Pollution Control Act.

Mr. COULTER. Well, Mr. Chairman, as I read that section of the Federal Water Pollution Control Act, the Secretary is directed by Congress to collect and disseminate information. Now, this particular section of the statute did not repeal, did not modify, section 1905.

Mr. REUSS. It fleshes it out. It fleshes out the "extent not authorized by law" portion.

Mr. COULTER. As the Commissioner pointed out, we will be utilizing this to make information available through statistical summaries and otherwise, and where necessary in the development and support of programs, and so forth; in connection with the third point he made under confidentiality this information will be utilized.

Mr. REUSS. Well, I don't know how it's going to profit the 204 million people of the United States to get a statistical summary saying that at various undisclosed points in the 50 States various miscreants are discharging however many liters a day of mercury, arsenic, cyanide, or whatever other poisons they are discharging.

I don't think that's going to butter any parsnips whatever.

Mr. COULTER. I would agree with you, Mr. Chairman, and equally I would say it's not going to be of any benefit to really divulge technical processes or technical operations that a company might be engaged in.

Mr. REUSS. Stipulated. We have always said the technical process need not be disclosed. But do you call it a technical process to be asked to state whether you are discharging mercury and the other things I have been talking about?

Mr. COULTER. No. I think the Commissioner has indicated that.

Mr. REUSS. Well, I don't want to prolong this further, but I think there is a considerable job of cleaning up and clearing up to be done here, and I don't know why you don't simply say that trade secrets will be held inviolate and confidential and anybody who discloses them will, under section 1905, be fined $1,000 and imprisoned for 1 year or both.

I'd like to see any public official who covers up mercury, cyanide, and arsenic pollution in Nine Mile Creek fined $1,000 and imprisoned for 1 year or both. But you want to protect him. And we have a continuing disagreement.

Mr. Russell, I now want to hear from you.

Mr. Russell. Trade secrets as related to operations and processes are how something is done. And there wouldn't be any problem under the approach taken here about being able to identify the result of what was done, what pollution was created, and who did it. So the trade secret that needs protecting in order that it will not injure one operator by revealing his methods to another doesn't interfere with what is the amount of pollution and who did it.

So we are able to act. We'd be able to act on the matter and not be prevented from acting by reason of the regard that we have to protect the trade secrets.

Mr. Reuss. I'm delighted to hear you say that, Mr. Under Secretary. And with what you say now I agree perfectly, and you're on all fours with this subcommittee.

The only trouble is that in Mr. Dominick's statement it says that information will be considered confidential within the meaning of 18 U.S.C. 1905, which provides penalties for unlawful disclosures of trade secrets and other classes of confidential information.

The trouble is that section 1905, after getting through with mentioning trade secrets, refers to processes, operations, style of work, or apparatus.

Mr. Russell. Again——

Mr. Reuss. So if you can amend that condition in Mr. Dominick's statement to just refer to trade secrets, it would seem to me everything would be fine and we would be in complete agreement.

Mr. Russell. Well——

Mr. Reuss. We aren't interested in invading the necessary corporate privacy on a trade secret, but we are interested in finding out whether, secret or no secret, they are dumping poisons into our waterways.

Mr. Russell. But trade secrets which relate to operations, processes, and apparatus are no barrier to our identifying an amount of pollution.

Mr. Reuss. I absolutely agree. The trouble is, Mr. Under Secretary, that if you read section 1905, it does not exclusively mention trade secrets as the sole kind of information which can't be released. It includes processes, operations, style of work, or apparatus. And if English grammar means anything, those processes and operations don't have to be related to trade secrets.

Mr. Russell. Well, they don't have to be related to it, but describing—it isn't necessary to identify the result by describing the process that creates it. So the fact that we don't divulge the process isn't going to be any handicap.

Mr. Reuss. Well——

Mr. Russell. And if we don't describe the apparatus.

Mr. Reuss. I'm much encouraged at what you are saying, Mr. Secretary. And I think, based on what you say, if we can work cooperatively in the next few days at dotting "i's" and crossing "t's"—and I'm sure we can—maybe this is just a tempest in a teapot, and I hope it will be.

But what you're saying is that, in the Nine Mile Creek case that I put, you are not going to cover up for the XYZ manufacturing company which says that it is introducing these poisons into the stream. Instead, you are going to make public, not just to public officials, but to the citizens and taxpayers, the name of the company and the stream and place where the discharge is occurring and the elements discharged? Is that true?

Mr. **Russell**. Yes, sir. Not how he did it.

Mr. **Reuss**. I am most encouraged, and I think we can correct what has consumed quite a bit of time here.

Mr. Vander Jagt?

Mr. **Vander Jagt**. Thank you very much, Mr. Chairman.

Like the chairman, I regret the 7-year delay in arriving at what I think is a very commendable decision and conclusion by the Department. I am sorry for the delay, but I am tremendously thrilled and excited by the decision to proceed immediately with the voluntary industrial waste inventory, and I think you are to be commended and congratulated for making that decision.

I think the chairman and this committee and its staff, by never giving up the struggle for 7 years, are also to be commended over this very happy result.

I will confess that if I had to take a law examination on this discussion of the law right now, I would probably flunk the exam. So I just want to make sure in my mind of the facts. Is it your feeling, under the provisions of this confidentiality outline which you have presented, that you would be authorized to, and will, publicize the name of the discharger and the point of discharge and the quantity of discharge?

Mr. **Coulter**. It would be my opinion that under this statute we could do just that as long as we did not reveal the technical processes and operations that went into this.

Mr. **Vander Jagt**. Then I agree with the chairman again that we're on the same beam and it's just a matter of working out the details. And I'm glad that the problem is cleared up.

I have nothing further, Mr. Chairman.

Mr. **Reuss**. Mr. Hicks?

Mr. **Hicks**. No questions, Mr. Chairman.

Mr. **Reuss**. Counsel Indritz.

Mr. **Indritz**. In light of the colloquy that has taken place between the committee and yourselves, it may be that I need not pursue some of the details of the precise language of your proposed confidentiality clause. However, I call to your attention that paragraph 2 of your proposed confidentiality clause states that certain information will be considered confidential within the meaning of 18 United States Code, section 1905, and then states that there are certain exceptions in paragraph 3 of your proposed confidentiality clause.

Paragraph 3 refers to sections 3(a) and (c), sections 5 and 6, and section 10, of the Federal Water Pollution Control Act.

My question is: Is this enumeration of sections intended to exclude other sections such as, for example, section 7 of the act which relates to the States' programs of planning and enforcement? Will it exclude section 11 which relates to oil pollution? Will it exclude section 12 which relates to discharge of hazardous substances? Or any of the other sections of the act which invest in your agency the duty to deal with the abatement and control of water pollution?

Mr. **Dominick**. Mr. Indritz, I think that is an excellent question and goes to the heart of some of the drafting problems here.

We would see fit to draft this statement in such a way that this is not exclusive. I think you have raised an excellent point, and perhaps the addition of words "including but not limited to" or "for example" would be a way of getting around this drafting problem.

A direct answer to your question is: No, we are not intending to exclude the other provisions of the act from the operation of section 1905.

Mr. Indritz. If the chairman of the subcommittee were willing to offer assistance to you in the drafting of that language, would you be willing to accept such assistance?

Mr. Dominick. We are always willing to accept assistance from the Congress.

Mr. Reuss. If I may interject, I think we are making great progress, and from the responses of all three of you gentlemen I think that the preliminary draft language which you have here can be clarified.

For example, it would be unfair to industry to send out a voluntary questionnaire which seems to say to the lawyer for that particular industry that anything having to do with processes or operations is going to be confidential. They would be justified in thinking that, well, discharging mercury is a process and operation "so we're protected" but they'd then find that the Interior Department is making it public, which you tell us, and which we're happy to hear, that you intend to do.

Therefore, I think, in fairness to industry, you ought to make it clear—and I'm sure you will—that what will be kept confidential is the trade secret part of it; but, as Mr. Vander Jagt says, what is discharged, who discharged it, into what waterway, and when, will not be kept confidential, so that if they want to say, "No: we're not answering your questionnaire," they're entitled to say that.

Mr. Dominick. We have no disagreement with that, Mr. Chairman.

Mr. Reuss. If you can submit to us within the next couple of days a little reworking of this, I'm sure that the members of the committee on both sides and our staff could get something that we all agree on and which will be fair to industry and fair to the public and we'll applaud it.

Mr. Indritz. My next question deals with your proposed paragraph 4 on your confidentiality clause. It states that any information supplied may be made available to State, interstate and local water pollution control agencies or officials or agencies of the United States, but then it goes on to say: "provided such agencies or officials agree that the information will not be disclosed except as authorized by appropriate Federal, State, or local law."

Could you kindly explain, or amplify, the meaning that you attribute to the phrase "will not be disclosed except as authorized by appropriate Federal, State, or local law"? Will you require that there be an affirmative provision in State law mandating disclosure, or will you impose nondisclosure rules on Federal or State agencies which are more limited or restricted than your own broad disclosure authority?

Mr. Coulter. Mr. Indritz, I think that what this paragraph 4 is talking about, of course, is the existing law of the State and local governments and the existing law in the Federal Establishment; and in the Federal Establishment, of course, the same statutes control with regard to other Federal agencies as they do to Interior. So that the release of this information and the use of it by a State or local agency would be governed by their existing statutes, and this would be made known to the industry when the questionnaire is sent out, and to the same extent the Federal agencies would be subjected to the use of this information by any curtailment currently provided by Federal statute.

Mr. Indritz. For purposes of the record so that we may have precise knowledge as to the format of your questionnaire—you have transmitted to us two forms. One is FWPCA 120-5-68, and the other is FWQA Form 120 (Rev. 4-70). Will you please specify the nature of these forms? Is one an early draft which is not going to be used? Or are both going to be used?

Mr. Dominick. As I understand it, Mr. Indritz, from our staff, your staff requested that we submit to the committee forms that had been previously considered, and I believe the form which you first mentioned was one which had been previously considered.

The form which you have in your hand now, the FWQA form—what is it?—4-70?

Mr. Indritz. Yes.

Mr. Dominick. It represents the form which we are intending to proceed with at the present time.

Mr. Indritz. Have there been any modifications to Form FWQA-120 (Rev. 4-70) since it was printed?

Mr. DeCamp. The answer is yes.

Mr. Indritz. Will you please state what those modifications have been?

Mr. DeCamp. To add on page 2 arsenic and mercury which were not in the original list of heavy metals.

Mr. Indritz. Are those the only modifications to the form?

Mr. DeCamp. As presently I have it in my hands, those are the only modifications we have made to the form revised 4-70.

Mr. Indritz. Have there been any modifications to the instructions which have been printed to accompany FWQA-120?

Mr. DeCamp. There is a modification in front of me in subparagraph 4, "Submission of Reports," noted in ink. That should be on your copy.

Mr. Indritz. Is that the addition of the words "and two copies"?

Mr. DeCamp. Yes.

Mr. Indritz. Have there been any other modifications to the form?

Mr. DeCamp. None on that page.

Mr. Indritz. On any other page?

Mr. DeCamp. On page 3 you will find in the diagram some red-arrow modifications.

Mr. Indritz. Are there any other modifications besides the ones you just mentioned?

Mr. DeCamp. I have no record of any other modifications.

Mr. Indritz. Is it correct to state that Form FWQA-120 (Rev. 4-70), with the additions of mercury and arsenic on page 2, and the instructions with the revisions you have mentioned, will constitute the questionnaire and instructions which will go forth to industry, together, of course, with whatever language on confidentiality may be worked out?

Mr. DeCamp. As it now stands; yes, sir.

(The form referred to, and accompanying instructions, are printed in appendix 3 of this hearing record.)

Mr. Indritz. The supporting statement that you submitted to the Bureau of the Budget, as it was then called—now the Office of Management and Budget—for clearance action on this form, states that the inventory is being planned in two phases. Would you kindly elaborate on that proposal?

(The supporting statement referred to is printed in appendix 3 of this hearing record.)

Mr. DeCamp. If you will note, on page 5 of the supporting statement, under section B, we state that the inventory is now planned in two phases with a distinct time lag between the two phases to provide time for analysis and any necessary modifications to plans and procedures.

The purpose of the phasing is to use the form and our procedures as a test—a pretest, so to speak—to determine the effectiveness and efficacy of it.

Mr. Indritz. Will you advise the subcommittee, and keep the subcommittee advised, on the progress being made on the inventory program?

Mr. DeCamp. Yes, sir.

Mr. Reuss. Secretary Russell, Commissioner Dominick, Mr. Coulter, thank you very much. No further questions. Good job. We appreciate what you are doing, and you have our full support, and I think with a little fixing up of the language on that section 1905 business you will have an excellent questionnaire form.

[Note.—A revised confidentiality clause was transmitted to the subcommittee on October 26, 1970. It is set forth in Commissioner Dominick's letter of that date in appendix 2 and on the revised questionnaire form in appendix 3.]

Mr. Reuss. Our next witness will be Mr. Robert E. Jordan III, General Counsel of the Army, and Special Assistant to the Secretary of the Army for Civil Functions. You are very welcome, Mr. Jordan. You have a 6-page statement which will be included in the record, and we now would like to ask you to proceed in your own way. Will you identify your associate for the record?

STATEMENT OF ROBERT E. JORDAN III, GENERAL COUNSEL OF THE ARMY AND SPECIAL ASSISTANT TO THE SECRETARY OF THE ARMY FOR CIVIL FUNCTIONS; ACCOMPANIED BY J. J. LANKHORST, ASSISTANT GENERAL COUNSEL, CORPS OF ENGINEERS

Mr. Jordan. With me this morning, Mr. Chairman, is Mr. Lankhorst, Assistant General Counsel, Office of the Chief of Engineers, who is concerned with legal matters relating to permit functions in the Corps of Engineers.

Mr. Chairman and members, it is a pleasure to be here today, and I appreciate the opportunity.

I am Robert Jordan. I serve as General Counsel of the Army and also wear a second hat as Special Assistant to the Secretary of the Army for Civil Functions.

In that latter capacity I supervise, for the Secretary of the Army, the Corps of Engineers' civil works program.

Earlier this year, in testimony before the Subcommittee on Energy Natural Resources and Environment of the Senate Commerce Committee, I announced a policy of the Department of the Army to enforce 33 USC 407—the so-called Refuse Act—against those discharging into navigable waters, by requiring permits for such activity.

I noted then that the Department of the Army's current permit program was in implementation of section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and that, historically, we have not had a formal permit program implementing section 13 of the 1899 act (33 U.S.C. 407). As I indicated in my testimony, however, we are now moving to develop a program which would require all dischargers to apply for a Department of the Army permit.

We are developing this program in coordination with the Environmental Quality Council and other agencies, such as the Federal Water Quality Administration of the Department of Interior, which are necessarily concerned with the relationship of our proposed permit program to on-going programs, particularly in the water quality area.

The program is going to require detailed interagency agreements and extensive new regulations; we are still in the process of drafting such agreements and regulations and identifying procedures for the processing of the large number of permit applications that are anticipated. Although we recognize the need for the program and believe that it should be made applicable, as soon as possible, to all who are discharging or who propose to discharge into navigable waters, we may, because of limited resources, have to develop an initial system of priorities in effect, to match workload to available personnel and funds. For example, we might give more attention to proposed discharges from new facilities and the discharge of hazardous substances which may pose a significant danger to man or his environment.

There are a number of problems with which we are specifically concerned. First, as I have already mentioned, we have a resources problem, particularly in the personnel area. In our 37 Engineer districts with civil functions, we have only approximately 110 people who work in the permit area, and some of these are part time.

The U.S. Army Engineer District, Detroit, Mich., for example, has only two men in its permits and enforcement office. Along with other assigned duties these men have surveillance responsibility for over 3,000 miles of shoreline and they are fully occupied right now by duties growing solely out of our section 403 permit program and other preexisting programs.

Accordingly, in the development of our program, we are attempting to anticipate and find solutions for the administrative and other practical problems which will result from the large number of permit applications we expect.

Second, we recognize that the permit program envisioned has a significant number of water quality implications. We are working with the FWQA to insure that the program will complement existing and prospective FWQA programs.

Also, recognizing the expertise of the FWQA in the water quality area, we are developing procedures which will insure that water quality considerations are addressed in detail in connection with the consideration of permit applications; and the formulation of procedures with FWQA is somewhat complicated by the prospective reorganization that is associated with the proposed creation of the Environmental Protection Agency.

Third, as required by the Environmental Policy Act of 1969, we are reviewing existing and proposed procedures with the Environmental Quality Council and other agencies to make sure that there will be no duplication of effort.

We are convinced that the fight against pollution will require Federal, State, and private expenditures of a considerable magnitude and believe that there is no room for wasteful duplication of effort—either on the part of Government, or on the part of industries—in complying with Government requirements.

These are some of the factors with which we are wrestling and explain, in part, the need to proceed intelligently and deliberately, but I should emphasize, not slowly, in the establishment of what we expect to be a very important program.

You have asked what measures the corps will take under such a program to identify all discharges and require the discharger to obtain a permit. Given adequate publicity, we would expect and hope to have a high level of voluntary compliance.

But those failing to apply for and obtain an appropriate permit would be subject to prosecution and injunctive action under the Refuse Act. The problem, of course, will be to identify those who, for one reason or another, have failed to apply for the necessary permit.

In this connection a national inventory of industrial discharges would be most helpful since, in identifying those who discharge into navigable waters, it would provide a data base from which it would be possible to identify dischargers who have not applied for required permits.

Conversely, it should be noted that the program we envision would complement the effort to obtain a national inventory of industrial discharges since an applicant will have to provide with his permit application information identifying the character of his effluent.

You have also asked whether or not the information obtained on the FWQA form would aid the corps in monitoring the nature and quantity of the discharge after a permit is granted.

Our current regulations for outfall sewers and other similar structures under 33 U.S.C. 403 preclude a permittee from changing the nature of his effluent without a permit modification. Such permittees are also required to maintain adequate records of the nature and frequency of discharges and to provide such information periodically to the district engineer. We contemplate that similar regulations and conditions will be applicable in the case of our 407, or Refuse Act, permits.

Although this type of monitoring is inherent in the program envisioned, the data provided the FWQA pursuant to the efforts of that agency to establish a national inventory would be useful to the corps in that it would represent a master list against which we could check information provided to the corps. I think, however, that this is an area in which we would have to coordinate with the FWQA again to avoid wasteful duplication of efforts in terms of the type of information to be provided, the frequency of reporting requirements, and the data to be maintained.

It is very difficult for us to estimate the economies which might accrue to us from a national inventory of industrial wastes. Clearly a system of reporting by dischargers will be substantially less costly than any similar program that might be keyed to routine, plant-by-plant visits by Government personnel.

We would suspect, however, that the principal value of, and indeed the need for, a national inventory of industrial wastes is related to planning for the future. The absence of such information makes it more difficult to initiate intelligent, long-range, cost-effective planning for our streams and river basins because, not having a very clear picture of what is going into our waters on a day-by-day basis, there is uncertainty as to what our goals and methods ought to be.

Mr. Chairman, that completes my prepared statement. We would be happy to try to answer any questions which the committee has.

Mr. Reuss. Mr. Jordan, I want to congratulate you and the Corps of Engineers on a wonderful statement, and I want to say that though in the past upon occasion some of us have been critical of the corps, I can't think of an agency of Government which in the last year or so has shown more forward motion on environmental questions generally.

You've done so many good things. And what you are doing in this particular area under the Refuse Act of 1899 is particularly in the public interest.

So I wish you would convey my applause to General Clarke and all of the other dedicated people in the corps.

Mr. Jordan. We appreciate those remarks.

Mr. Reuss. We are proud of what you are doing.

Mr. Jordan. I certainly will convey those remarks to General Clarke.

Mr. Reuss. I just have one question: You spoke of the fact that you are very shorthanded in terms of people who can go out and police polluters of our streams. You mentioned, for instance, that in the engineer district operating out of Detroit, Mich., you have got just two men with responsibility for 3,000 miles of shoreline.

Incidentally, that is the area in which a lot of mercury pollution came to public attention just a few months ago, isn't it?

Mr. Jordan. Yes, sir. We are very much aware of that.

Mr. Reuss. Isn't it likely that if you had an adequate amount of personnel there you could have discovered that some time ago?

Mr. Jordan. We might have, although the failure to have a formal Refuse Act permit program I think would have made it less likely.

But with the combination of the program which we are embarking on, plus adequate people, I think it is much less likely that that kind of thing would happen in the future. I certainly hope so.

Mr. Reuss. Am I right in thinking that the Corps of Engineers recently testified before the appropriations committees of the Congress that an additional $4 million to hire supervisory personnel would be a great boost for the environment?

Mr. Jordan. We did furnish information to the committees to that effect. I believe that following the testimony in the Senate, Senator Hart had a conversation with the chairman of our appropriations subcommittee, Senator Ellender, and as a result we furnished information to the committee staff.

An additional $4 million would be a great boost. Obviously, you can't tool up overnight and bring people on board. But with that amount of money we anticipated we would be able to get off to a running start.

Mr. REUSS. Has the Office of Management and Budget approved that extra $4 million?

Mr. JORDAN. They have not. In fairness to them, I guess there is no formal piece of paper before them now. We are processing a request. There is some question procedurally in the budget mechanism how this ought to be handled, whether as a supplemental or whether it can be worked into the current process.

Unfortunately, this whole thing came up late. The budget process starts early, and it came along fairly late in the scheme of things. But we have been talking to them about this and hope we can find a way to get the money.

Mr. REUSS. I'm quite clear that I fully support your request, and I suspect that all the members of this subcommittee would. I can't think of a better use of $4 million.

Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman. And I, too, hope you get your $4 million.

Mr. JORDAN. Thank you.

Mr. VANDER JAGT. And I also add my voice to that of Chairman Reuss in commending the corps for some of the new programs that have been initiated and the very fine directions it is beginning to take.

I particularly commend you for the permit program to try to identify the discharges and the source of the discharge and the amount of the discharge. And I think the gist of your testimony was that the voluntary industrial waste inventory will be immensely helpful to you in terms of providing a data base to carry out your permit program under the 1899 Refuse Act.

Mr. JORDAN. There is no question about that, Mr. Vander Jagt. We think it will be very helpful.

Mr. VANDER JAGT. Just one final question. You were here for the earlier testimony; were you not?

Mr. JORDAN. Yes; this morning.

Mr. VANDER JAGT. And you heard the discussion regarding the confidentiality clause?

Mr. JORDAN. I did.

Mr. VANDER JAGT. Can you give us an opinion as to whether or not after hearing the testimony, if FWQA made this information available to you—about the discharger, the point of discharge and the amount of discharge—you would be able to make use of that data? Is there any question in your mind?

Mr. JORDAN. I'd like to comment on that and on another related aspect of the confidentiality problem that grows out of our program.

I would not perceive any difficulty as a matter of law. I believe that the section in question (18 U.S.C. 1905) is a criminal section. It is "hornbook law" that criminal sections are to be narrowly construed. I don't believe that "processes" and "operations" include simply the act of dumping out a particular kind of effluent at the end of the pipe.

I think "processes and operations" refers to what takes place inside the plant that produces the effluent.

And if I had to interpret that section in connection with our responsibilities, I would not give "processes and operations" an expansive interpretation but a narrow one, which I think is wholly consistent with what I understand to be the legislative history of that act.

So that solves a large measure of the problem, because our basic concern is with what is coming out at the end of the pipe and not how it got to be that way.

Secondly, I don't believe that section was ever intended to apply to a public official pursuant to a lawfully established public program who, in discharging his responsibilities, found it necessary to make certain information available.

Our philosophy with respect to the Corps of Engineer permit program has been to try to operate it in public glare and scrutiny. It causes a hell of a lot of problems, frankly, but we think it's in the public interest.

We emphasize public hearings in the case of dispute where there is substantial interest in a permit case.

In connection with our Refuse Act program, furnishing information on effluent is not going to be voluntary. It's going to be required—required in the sense that if you want to get a permit, you must furnish the information. And I suppose it's somewhat like the statement—I think it was Justice Holmes—made in one free speech case, you know: "This fellow has a right to say whatever he wants to, but he doesn't have a right to be a policeman." We take somewhat the same position. We cannot compel someone to furnish information about the quality of their effluent, but we are in position to say that "unless you do so we will not consider your application for a permit."

So we're going to require the information and we're going to do everything we can to protect trade secrets, processes that really reveal internal manufacturing things that might be of advantage to competitors. I don't think this is going to be a serious problem.

But, on the other hand, we are not going to be prepared to protect such information to the extent that public comment on, and participation in, the permit process would be precluded.

We think there is no inconsistency with the statutory section on this point, and we think we can work it out.

Mr. **Vander Jagt.** I thank you very much for a very candid and a very helpful answer. Thank you, Mr. Chairman.

Mr. **Reuss.** Mr. Hicks?

Mr. **Hicks.** No questions.

Mr. **Reuss.** Thank you again, Mr. Jordan. You're a great public servant. We're delighted to have you here.

Mr. **Jordan.** Thank you.

Mr. **Reuss.** Mr. Paul F. Krueger of the Office of Management and Budget. You are very welcome, Mr. Krueger. You have a written statement which under the rule will be received into the record.

Would you proceed in your own way?

STATEMENT OF PAUL F. KRUEGER, ASSOCIATE DEPUTY FOR STATISTICAL POLICY, STATISTICAL POLICY AND MANAGEMENT INFORMATION SYSTEMS DIVISION, OFFICE OF MANAGEMENT AND BUDGET

Mr. KRUEGER. Thank you, Mr. Chairman.

I am very happy to be here to throw any light I am able to on the kind of questions you have under consideration.

I think that in the interest of time I would suggest that the statement not be read. If you have any questions about it, I will be glad to elaborate on them.

I might say simply that in preparing this statement we have attempted to be responsive to the five points on which you requested testimony in your letter addressed to Director Shultz of the Office of Management and Budget. If there are any questions about any of those responses which you wish clarified, I would be happy to do so.

(Mr. Krueger's prepared statement follows:)

Prepared Statement of Paul F. Krueger, Associate Deputy for Statistical Policy, Statistical Policy and Management Information Systems Division, Office of Management and Budget

The following statement is given in response to the request of the committee for information on five topics pertaining to the industrial wastes inventory.

1. There is no provision of law which specifically authorizes the Office of Management and Budget to insist that an agency which desires to collect information on a voluntary, nonconfidential basis must insert in the questionnaire a confidentiality clause. Our review of the proposed waste water inventory was undertaken pursuant to authority given to the Director of the Bureau of the Budget by sections 5 and 6 of the Federal Reports Act of 1942.

The Federal Water Quality Administration has no authority to require respondents to furnish information. Rather, it must depend upon their voluntary cooperation. Adequate responses are necessary in order to develop reliable data for the use of the Federal Water Quality Administration. It was our judgment that the Federal Water Quality Administration was not likely to obtain adequate responses without a pledge of confidentiality of individual returns.

2. The scope of applicability of a confidentiality pledge depends on its wording. In the absence of limitations specifying otherwise, such a pledge would presumably extend to all information supplied by the respondent. However, it could be phrased to apply only to responses to certain questions or sections of the form. In such cases, in order to avoid uncertainty and misunderstanding, it should be made clear what part of the reply was not so covered, and what restrictions, if any, would be placed on the use of the exempted portion.

3. Documentations submitted by FWQA in support of their request for approval of the survey in 1968 described the need for, and use of, data on industrial waste water disposal as follows:

(*a*) To provide basic data necessary to establish and/or review and judge the adequacy of water quality standards.

(*b*) To provide data necessary for effective establishment and review of state plans for carrying out their water pollution control programs.

(*c*) To provide necessary input to several annual studies directed by Congress in the areas of the cost of administering the Water Pollution Control Act, as amended, the cost of treating water to abate pollution and the economic impact on affected units of the Government of the cost of installation of treatment facilities.

(*d*) To provide data on which to base planning for research and development programs.

(*e*) To identify what and where Federal assistance can be provided to make the greatest contribution. Minutes of the August 13, 1968, meeting state:

"Spokesmen for FWQA said that they understood industry's concern about confidentiality. It is not intended that the data be used for enforce-

> ment against individual companies. However, the data are needed for the official records of enforcement conferences if the actions of the conferences are to be legally sustainable."

The minutes, a copy of which was submitted to this committee, show the names of FWQA and Interior representatives at the meeting but do not indicate who made the statement. Staff of FWQA reviewed a draft of the minutes and made no suggestions for changes in the record.

4(a). You refer to the "committee's view that voluntary cooperation by industry in establishing the industrial wastes inventory can succeed and 'ought to be given a fair trial'. . . ." If the purpose of the survey were to obtain data for use in ways which would require public disclosure of individual replies in public hearings, or in enforcement proceedings, then giving a confidentiality pledge would defeat the objective. However, as stated above, we understood the purpose was to compile statistics on the nature and magnitude of the industrial waste disposal problem. Thus, rather than defeating the objective, the confidentiality pledge would have facilitated the conduct of a successful survey and the compilation of an important body of information needed by both the Congress and the executive branch.

4(b). Restrictions on disclosure by the collecting agency of information which would impair the respondents bona fide trade secrets would be appropriate. If protection of trade secrets were the only basis for according confidential treatment of individual replies, however, the effectiveness in obtaining adequate responses would be limited.

5. The meeting with the industry advisory panel in August 1968 did not include representation by conservation, clean water, or similar groups. In addition to people from industry and the Department of Interior, Miss Jodie Scheiber attended as an alternate for the Chief Counsel of the House Natural Resources and Power Subcommittee. At that time, it was not the practice of the Bureau of the Budget to notify other interest groups of such meetings and no such groups had expressed to the Bureau any interest in the fact that that survey was being planned.

Such representation is not now excluded from these meetings. Notices of meetings are sent to anyone requesting them and anyone may attend.

Following preliminary discussion of the FWQA proposal for taking this inventory, on Tuesday, September 15, we informally approved the questionnaire and the statement that will be made to respondents regarding confidentiality and the circumstances under which uses of individual reports may entail disclosure to State or local government bodies and to the public. Agreement is expected on other aspects of the basic plan for the national industrial wastes inventory so that within a few days FWQA can proceed with a field test as the first phase of the survey.

Mr. KRUEGER. I might simply add that at the very end of the statement in response to your letter enumerating the five points and requesting some information on what procedures might be required, who might be consulted with in the process of review of any subsequent proposal for conducting the inventory—that rather than going through that, I simply said that we have indicated to the Federal Water Quality Administration our general assent to the conduct of the proposal as they have presented it and we hope it will be underway very shortly.

I trust that any further consultations with respect to the confidentiality clause will not delay that unduly.

Mr. REUSS. Thank you very much, Mr. Krueger.

Counsel, Mr. Indritz, later on will have some questions to ask you about what seems unfortunately to be a difference of opinion between yourself and the representatives of the Department of the Interior on this trade secrets question, but I'd like now to recognize Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you very much, Mr. Chairman. You heard the earlier testimony, Mr. Krueger?

Mr. KRUEGER. Yes.

Mr. VANDER JAGT. Did you hear the testimony that it is the intention of the Department of the Interior to disclose the discharger and the point of discharge and the amount of discharge?

Mr. KRUEGER. Yes.

Mr. VANDER JAGT. In your statement on page 3 you are summarizing a meeting, the minutes of which state: "It is not intended that the data be used for enforcement against individual companies. * * *"

Mr. KRUEGER. Yes.

Mr. VANDER JAGT. Can you reconcile that with the testimony about which I have just refreshed your memory?

Mr. KRUEGER. This response here is given in reply to the particular question which the committee asked in the letter to the Director, which was, what was our understanding with respect to the use of the survey, the use of the data to be compiled by the survey, that was under consideration in 1968?

The use of enforcement purposes was not a part of that proposal.

Mr. VANDER JAGT. And further down on page 3 you say: "However, as stated above, we understood the purpose was to compile statistics on the nature and magnitude of the industrial waste disposal problem."

Mr. KRUEGER. Correct.

Mr. VANDER JAGT. Was your agreement conditioned upon that understanding?

Mr. KRUEGER. I don't understand what you mean by "agreement."

Mr. VANDER JAGT. Well, let me put it this way: You have heard how this information is intended to be used?

Mr. KRUEGER. Yes.

Mr. VANDER JAGT. Do you anticipate any difficulty in having Office of Management and Budget approval for the voluntary industrial waste inventory?

Mr. KRUEGER. Well, as I have indicated, we have already given informally our assent to the proposal as it has been presented. I would like to emphasize, however, the point that the proposal as now presented is substantially different than the one that was considered earlier.

Mr. VANDER JAGT. And that is why I asked you: Do you anticipate any trouble in having OMB approval for this?

Mr. KRUEGER. No.

Mr. VANDER JAGT. You do not?

Mr. KRUEGER. No.

Mr. VANDER JAGT. Even after having heard the purposes for which the information will be used?

Mr. KRUEGER. The point we are concerned with here is that the purposes of the survey, and the uses of the information to be collected should be made clear to the respondents so that they may decide whether or not they will furnish the information.

Insofar as our concern with the subject is concerned, we are only involved in the nature of the statement. We have many different kinds of data collections that are conducted by various agencies in the Federal Government. Some of them are specifically for the purpose and for no other purpose than to make public disclosure, to place the responses in a public document room where anyone can have access to them. That's perfectly appropriate and it's proper if that is indicated as the purpose of the survey.

But I would like to repeat that the proposal that we now have and to which we have given informal approval is different from the one which was considered in 1968. The earlier proposal was to compile statistical data for the purpose of getting a measure of the nature, the magnitude, and the geographic distribution of the pollution problem, by river basins or other bodies of water, and for that purpose it was not necessary to indicate that data would be disclosed.

That's the reason we got into the discussion with respect to the nature of the confidentiality pledge and the conditions under which the survey in 1968 was considered. There was a difference of opinion between our office and the sponsoring agency as to the nature of the confidentiality pledge.

We were concerned, having the understanding that the purpose was to obtain a statistical measure of the pollution problem, that the best chances for success in getting that information were under a pledge of confidentiality.

Mr. VANDER JAGT. I understand very well the different nature of the requests in 1968 and now. I also understand and appreciate the concern of your Bureau. I think it's a legitimate one and a very worthy one.

But my question is: Having now heard the use to which this information will be put, do you anticipate—and understanding now very clearly what the nature of the request is—do you anticipate any difficulty in Office of Management and Budget approval?

Mr. KRUEGER. I repeat, no.

Mr. VANDER JAGT. Thank you.

Mr. KRUEGER. We have informally said we have no question about it. This is not a matter at issue any longer, they having stated what the purpose is. And for this purpose it is entirely appropriate, as we view it, to make this kind of a statement with respect to the circumstances under which data will be disclosed.

Mr. VANDER JAGT. I am very pleased and happy with your answer.

Let me just explore one other subject, just one further question, which may or may not be a footnote:

Would you anticipate any difficulty with the confidentiality clause if it were to read differently than we have discussed today and provided that, instead of giving a blanket confidentiality clause with some exceptions, there was no confidentiality unless the industry could affirmatively demonstrate that this involved a trade secret?

Mr. KRUEGER. I don't think the matter of disclosure of trade secrets is the crux of the problem.

Mr. VANDER JAGT. No, the way it stands now, the industry can rather voluntarily, or at will, just say, "I'm sorry, I'm not going to provide that information because it involves a trade secret." What if there were a requirement that, in order to come under the trade secret provision and not answer for that reason, the industry would have to affirmatively demonstrate—that the burden would be on them to show—that this did in fact involve a trade secret?

Mr. KRUEGER. I think that would be appropriate. But may I repeat I don't think the principal deterrent to obtaining responses is going to be through the disclosure of trade secrets. It's going to be through the disclosure of information which the respondent will consider as self-incrimination, holding up to the public opinion. "Here is"—the word has been used here before—"a miscreant," somebody who is doing something which in the public opinion he should not be doing.

And they will not in many instances, I believe, voluntarily disclose that kind of information.

So I would have personally very grave reservations as to the success of this kind of an approach in obtaining forthright, honest, complete reporting in response to this questionnaire. But this remains to be seen.

Mr. Vander Jagt. But FWQA has already said they are going to disclose the information.

Mr. Krueger. That's right. And industry will then be faced with the option of responding or not responding. And I would suppose that in many instances—since this discussion has taken place here with respect to the meaning of title 18, United States Code, section 1905—there will be perhaps endless discussions in the general counsel's offices of many manufacturing firms who will receive this report, as to what that means and whether or not they will respond.

Mr. Vander Jagt. Quite apart from the issue or the question of the success of the voluntary program, however, you would see nothing inappropriate in putting the burden of coming under the trade secret exclusion on industry—of proving affirmatively that that's why they aren't answering?

Mr. Krueger. No, except that I wouldn't assume that industry would take that simply as a burden since their first option is to report or not report. That's the first decision they make.

Mr. Vander Jagt. Which, if the decision were negative, might expose them to some public pressure.

Mr. Krueger. Yes, but it avoids the second decision, too, as to whether or not the disclosure would involve a trade secret. If they decide not to disclose, that becomes a moot question.

Mr. Vander Jagt. But wouldn't the public have a clearer shot at determining where their outrage ought to be directed if we could just remove that trade secret issue and it were squarely clear that industry was not supplying the information because it would not do so voluntarily?

Mr. Krueger. Yes.

Mr. Vander Jagt. Thank you very much.

Mr. Reuss. Mr. Hicks?

Mr. Hicks. No questions.

Mr. Reuss. I would have just one question, Mr. Krueger. You have been here throughout the hearing this morning and heard the responses given by the Department of the Interior?

Mr. Krueger. Yes.

Mr. Reuss. You have indicated that the Office of Management and Budget has tentatively approved the Department of the Interior's inventory proposal made and elaborated here this morning.

Mr. Krueger. The word I believe I used, at least in the statement here perhaps, is "informally," which simply means that we have given our verbal assent to the thing. There has been no official passing of papers.

Mr. Reuss. When can we expect the official passing of papers?

Mr. Krueger. I would assume the official passing of papers will occur when the remaining questions are resolved.

Mr. REUSS. But you don't see any difficulty with OMB approval?

Mr. KRUEGER. No.

Mr. REUSS. Thank you very much, sir. We appreciate your coming here.

Our remaining witness is Mr. Ralph Nader. Is Mr. Nader here now?

(No response.)

I am told by Miss Scheiber that Mr. Nader is on his way. Therefore, we will recess for a few minutes and then reconvene.

(Whereupon, a recess was taken.)

Mr. REUSS. The subcommittee will be in session again.

Welcome, Mr. Nader. Would you take your seat?

Do you have a prepared statement or will you proceed a capella?

STATEMENT OF RALPH NADER, WASHINGTON, D.C.

Mr. NADER. No; I don't have a prepared statement.

Mr. REUSS. Very well. I don't know if you have been informed by your associates of what went on earlier this morning, but the subcommittee is very pleased that finally, after many years, the executive branch is about to send out a questionnaire which should lead to the listing of who is doing the industrial polluting in this country.

Mr. NADER. Well, at the risk of being redundant on a number of points, I would like to present my remarks as they would have been made before the disclosures today, if this is permitted by the committee.

The national industrial waste inventory, which began with a recommendation in 1963 by your subcommittee, has undergone a history of delay and obstruction which cannot be remedied by the disclosures today that the inventory is now going forward.

I think it is incumbent upon this committee, or any other committee of Congress which is interested in the kind of information required to be obtained from industry in order to pursue statutorily sanctioned regulatory missions, to look into the reasons for this delay.

The problem of the Bureau of the Budget and its administration of the Federal Reports Act is that it has long transcended the basic reasons for that act, which are to prevent duplication by various agencies of questionnaires sent out to industry, to prevent the needless burdening of industry and commerce with excessive numbers of questions, and to simplify the questionnaires.

Beyond that, the Bureau of the Budget, in its very, very occult and secret office that has administered this act, has consistently engaged in two violations of the purpose of the act:

One, it has gone very heavily into the policy area, running roughshod over the considered decisions of Federal regulatory agencies and the kind of questions that they want to ask industry. This has occurred, for example, with the Federal Trade Commission. For a long time the Federal Trade Commission has been trying to get information about concentration in American industry. And with the rush of conglomerate movements in the last 2 years, the Federal Trade Commission has been caught up short without adequate data to form sound public policy. This can be directly attributed to the delays and the policy intrusions of the Bureau of the Budget.

The second area that I think has been way beyond the intent of the Federal Reports Act is the incredible delegation of the responsibility of the Bureau of the Budget here to private industry and commerce advisory systems.

It was only about a year and a half ago that the first request was made by a number of consumer spokesmen and Senator Metcalf to participate in some of these panels where the decisions were made as to what kinds of questions would be asked and in what form and the like. And even to this day, the Bureau has prevented open participation by consumer groups in these panels.

They send out notices to people who request to be put on the mailing list, but basically these are still exclusive industry advisory panels.

Now, it would be interesting to see in detail for the past 10 years all the minutes or transcripts or other memoranda indicating just in precise form how intrusive, how decisive, has been the industry role here.

It seems clear to me in surveying the history of this inventory that the industry advisory setup has been so antagonistic to the concept of the inventory that it has succeeded in delaying the distribution of this inventory form for a good number of years.

We come now to the national industrial waste inventory itself, and I think that there is a great deal of needless discussion because the basic assumption of this data gathering has never been made clear.

Let me indicate what I think the basic assumption is. The basic assumption should be that pollution is public information and at least takes on the characteristics of public property.

Now, I fail to see why the intrusion into citizens' environments of lethal, toxic, contaminating ingredients that go into the water and underground, and seep into the water that way, should be given any protection whatsoever as private property.

And when we consider that almost all of the arguments of industry about trade secrets and the like really stem from the concept of their having a private property in these lethal contaminants, I fail to see why industrial pollutants should be given any protection as to their properties; as to the time of discharge; as to where they are discharged; as to the effect they are having on fisheries and drinking water; as to their precise chemical properties.

I fail to see why any of these contaminants should have a legal protection that contraband does not have. If anything, they should have even less legal protection than contraband because contraband as such doesn't harm people. It doesn't give them diseases. It doesn't poison their drinking water. And it doesn't contaminate food products such as fisheries.

And I think that is the basic issue that has to be discussed.

Can pollution ever be considered as a commodity worthy of any legal protection in terms of confidentiality, voluntary offering, or the like? I think it is clear where I stand on this issue: That if pollution is a form of environmental violence, it should at least be given the characteristic of public property, and that any Federal agency which purports to be taking the lead in establishing systems to prevent water pollution must have the power to require the production of this information.

The whole concept of a voluntary industrial waste inventory reduces its effectiveness very, very drastically.

For instance, take a polluter who in his honest scheme of voluntary cooperation with the Government gives out a lot of information, and take a dishonest polluter who doesn't want to give out any information. What are the controls here?

So the whole point of confidentiality and the voluntary nature of the inventory is really at a very primitive level of consideration. In fact, one almost has to get philosophic or jurisprudential about this to gain the necessary perspective.

By what conceivable justification in 1970, after the ruination of many of our great streams and lakes and bays; after the disclosures of mercury poisoning dumped into the streams and lakes by companies who didn't want to improve their plumbing processes; after the disclosure of this mercury epidemic not by Government but by a graduate student in zoology at Western Ontario University as an illustration of just how candid and how on top of the subject Government authorities are these days, and in the light of recent disclosures before the Senate Subcommittee on Energy, Natural Resources, and the Environment that toxic metals in addition to mercury, such as cadmium, lead, zinc, arsenic, and others present—in the judgment of one expert before that committee hailing from Dartmouth—are a far greater risk to human beings than the whole pesticide, insecticide runoff situation. Now, against all of this and against the fact that industry is more likely to collude to do nothing if it is protected by this kind of voluntary confidential scheme and that, if anything, we want to try to have the Government selectively find out which companies are doing better than others in order to spur the lagging companies, and for a whole host of reasons why this inventory must be complete, accurate, and timely, I simply can't see fooling around with issues of confidentiality of voluntary submissions.

Just consider the functions of an industrial waste inventory. First of all, it is vital for cost planning, particularly since Goevrnment is now engaging in wide-scale subsidies and wide-scale indirect subsidies such as fast depreciation writeoffs for industries that adopt these controls.

If the Government is going to engage in subsidies, if it is going to use taxpayers' money, it has got to know the data that is integral to cost calculations and future planning.

The inventory is also vital for the development of standards, of course, by the States and in terms of the residual standards responsibility on the part of the Federal Government.

It is also important in order to anticipate new hazards at their earliest inception.

If this waste inventory had been launched 3 or 4 years ago, it is doubtful whether we would have had to wait until 1970 for the mercury contamination issue to be brought to the public's attention.

A national industrial waste inventory is also vital for uniformity. Uniformity is not just something like coordination. Uniformity involves comparability. Comparability involves a more facile capability on the part of law-enforcement officials to allocate responsibility.

Such an inventory is also vital for the enforcement conferences that are anticipated under the 1966 Clean Water Restoration Act. In fact, such data are very important in order for these conferences to be legally sustainable.

The inventory would also be helpful in the work of the Corps of Engineers in administering the long forgotten and recently uncovered 1899 River and Harbor Act.

The conclusion that might be drawn from the process of the last 7 years is simply another recognition that information is the currency of power in a democracy and that there is no need to use the rack and screw or the mailed fist or more corrosive forms of bribery or political influence when you have got control of the Khyber Pass of information. And that Khyber Pass of information is the Bureau of the Budget's office in charge of the Federal Reports Act, one of the least recognized, least publicized, least studied, powers in Government. The kinds of information sheets that are sent out to a selective mailing list, the whole phenomenon of birdwatchers, the really spectacular control over this process by commercial and industrial representatives, deserves an across-the-board scrutiny.

I have never come up against a single discrete unit of governmental power that has been so subvisible and so inaccessible to citizen or environmental or consumer interests as is the administration of the Federal Reports Act. I think if the subcommittee wanted to collect information about what this is doing to our regulatory process, how it is undermining the empirical or informational basis of a sound regulatory procedure and practice, the subcommittee only has to survey a number of present and former commissioners of the regulatory agencies such as the Federal Communications Commission, and the Federal Trade Commission.

Some of the more conservative commissioners on the FTC wax indignant when they hear the words "Federal Reports Act." That includes Commissioner MacIntyre, who has devoted portions of speeches on this subject.

[The Federal Reports Act referred to is printed in appendix 4 of this hearing record.]

But there is no point further in thinking that we can pass substantive laws as a democracy, that we can articulate noble goals and then in effect allow this bottleneck to stifle the process of information-gathering from the regulatees by the regulators.

I would also request that the subcommittee see if it can open up the process on a systematic basis over at the Bureau—that is, to permit an equivalent consumer environmental advisory input and access to information and access to the meetings.

Now, this inventory which has been seen in draft form would require information dealing with the kind of discharges, where they are discharged, whether through public sewerage systems or in standing pools or directly into the bodies of water. It would also involve some information concerning cost in manpower requirements for pollution control by the particular companies and a more detailed water analysis.

The objections by industrial spokesmen basically reduce themselves to the following points:

The inventory is not needed.

It will subject the industry to litigation.

It will cost too much.

And trade associations and States either are doing it or will do it.

I think there has been enough testimony over the past few months to show that these simply do not hold water, so to speak, that the inventory is needed, that even if the facts subject these companies to litigation, so be it. The courts still have to decide. They still have to evaluate the evidence. The fact is that this is public information, that there can never be I think in a civilized legal system a trade secret in lethality, and that the inventory will cost too much simply can be dispensed with by asking: What is the cost of not producing this information to the public at large and to the preservation of natural resources?

Finally, that trade associations are doing some of it I think is an assertion that should be looked into. This isn't the first time that trade associations have developed a capability to forge a united front to collect just enough information for their own defense and basically to make sure that no other member of the industry breaks rank, that no other company decides to give out more information or do the kind of things that would embarrass the lowest common denominator of performance on the part of the trade association.

The States simply neither have the capability nor the resources to do it. Furthermore, there would be all kinds of problems of lack of uniformity, temporal disparities, and the like.

Besides, if the States were to do it, the same problems would arise which industry would object to. Are the surveys to be voluntary? Is the information to be confidential?

So it doesn't resolve the key problems here. It simply tries to postpone paying attention to this issue by the Federal authorities and put it in State authorities where further delays of years can be expected.

Thank you very much.

Mr. Reuss. Thank you, Mr. Nader.

The Department of the Interior report of March of this year bewailed the lack of an industrial waste inventory and said, and I quote, "Every effort to initiate an industrial waste inventory has been frustrated."

I endeavored to find out who the frustrators were, but we have not gotten the answers yet. Can you fill in any of the gaps in the indictment?

Mr. Nader. I think you will find a good many frustrators in the American Petroleum Institute's ranks, the Manufacturing Chemists' Association, American Meat Institute, National Canners' Association, U.S. Chamber of Commerce, and the National Association of Manufacturers.

Look at the membership of the Advisory Council on Federal Reports and the membership of the industry panel that has participated in these processes.

And that's basically where the pressure comes from.

Mr. Reuss. Do you think there is any correspondence between the membership on the Advisory Panel on Reports and those who have been doing the polluting?

Mr. Nader. Yes; I think there's no question that they don't want this inventory, and they have made themselves clear even on the record. They give their reasons.

I don't think their reasons have any justification whatsoever. I think also they are laboring under an 18th century misconception that they can have private property in poisonous substances that are unleashed on the public continually, systematically, and often without the public knowing about it.

And that's really the basic issue.

Mr. **Reuss**. You don't think it is a legitimate trade secret, for example, that a company keep secret the fact that it is pouring arsenic, mercury, or cyanide into the public's streams and lakes and keep it secret because the public would understandably be angry if it knew?

Mr. **Nader**. I think that's one of the most impressive rhetorical questions I have ever heard. And the answer, of course, is "No." I mean the way you phrased it is its own answer.

It's just absurd to think that dumping of arsenic in water which now is getting up to levels of concern according to a recent report in Science magazine, the dumping of arsenic in water, and how much is dumped, where it is dumped, what company dumps it, what machines produce this kind of thing in terms of the process, can ever be a trade secret.

Mr. **Reuss**. You mentioned as candidates for the frustrators' award the various private groups and people. Anybody in Government or agencies of Government which you feel——

Mr. **Nader**. I'd like to add the American Paper Institute as well here.

In Government, it seems quite clear that a number of officials in the Bureau over the years have been responsible for this kind of secrecy.

Mr. **Reuss**. The Bureau of the Budget?

Mr. **Nader**. Yes, the Bureau of the Budget—for this kind of secrecy and for preventing access on the part of consumers. Even Senators inquiring have been routinely rebuffed. Consider Senator Matcalf's attempts over the last 3 years.

I think basically these officials should be called up before the subcommittee and asked very, very detailed questions, and I think the appointing of these officials by the heads of the Bureau to this job has to be scrutinized as well.

I think that this has to be considered one of the three most important functions of the Bureau. And to permit it that sublevel, subvisible control organization I think is just productive of this kind of abuse.

And a lot of it, of course, is simply a surrender. They simply surrender the public responsibility in this area to the business advisory people.

Mr. **Reuss**. Mr. Vander Jagt.

Mr. **Vander Jagt**. I have just one question, Mr. Chairman:

Mr. Nader, you told us that the infomation on industrial pollution is vitally important to any kind of effective program to combat pollution. You have told us that you fail to see why this information does not belong in the domain of the public.

Earlier this morning we heard testimony that Interior intends to proceed immediately on a voluntary industrial waste inventory, that they intend to make public the name of the discharger, the point of discharge, and the amount discharged.

This has been the goal of this committee for 7 long years of a never-ending struggle. We're heartened by it. We're encouraged by it.

Would you agree that it is an important and significant first step?

Mr. NADER. No, I would not, Congressman.

Mr. VANDER JAGT. And why not?

Mr. NADER. First of all, you state that they have agreed to make this information public.

Mr. VANDER JAGT. That is correct.

Mr. NADER. That penalizes the honest polluter—that is, in terms of being honest enough——

Mr. VANDER JAGT. What is an "honest polluter"?

Mr. NADER. A polluter who is honest enough to disclose all the facts. And because of that there is a disincentive to come forward because of the voluntary nature of the questionnaire.

So what will happen is that there will be a coordination of the responses by the respective trade associations. They will coordinate it so that there is a kind of common demonminator level of response. And I don't think any system of information procurement should penalize the more candid regulatee among others.

Mr. VANDER JAGT. What you're saying——

Mr. NADER. So it is not going to work, you see, because no company is going to say, "Well, quite apart from what the trade association is saying or what others are doing, we are going to show in great detail how we are contaminating America's waters," and then the Interior Department will proceed to make this public according to what you just said.

Well, how long do you think that's going to work?

Mr. VANDER JAGT. Well, for one thing, I think perhaps you can provide an incentive to some industries to comply—through your center. But in the absence of legislative authority today to have a compulsory inventory—though there have been bills introduced that provide for a compulsory inventory, there is no legislative authority to proceed—is not this a helpful first step?

Mr. NADER. Yes——

Mr. VANDER JAGT. And if it doesn't work——

Mr. NADER. In that sense it's a helpful first step to show that it is not a helpful first step.

Mr. VANDER JAGT. That the compulsory inventory is necessary?

Mr. NADER. Yes.

Mr. VANDER JAGT. But is this not a significant first step in that direction?

Mr. NADER. Sometimes we have to learn by experience. And reason isn't enough.

Mr. VANDER JAGT. And if it does work, which some of us feel it might, so much the better?

Mr. NADER. Fine if it does.

Mr. VANDER JAGT. Thank you.

Mr. REUSS. I would have one additional question suggested by Mr. Vander Jagt's question. If, after 4 months or 8 months, the returns come in and the Department of the Interior discloses that X corporation, Y corporation, and Z corporation have such contempt for the U.S. Government that they have refused to answer the questionnaire, would you and your associates remain silent, calm, and do nothing?

I would think, to answer my rhetorical question, that thousands of conservationists throughout the country would be very vocal at this contempt for the environmental interest of the United States and that no better public opinion lobby for the immediate enactment of a compulsory questionnaire could possibly be thought of. Isn't that what is going to happen?

Mr. **Nader.** Well, the past is not encouraging for that prospect. I mean, for example, this waste inventory has been bottled up for 7 years, and I daresay that the greatest proportion of the environmentalists in this country were hardly aware of what was going on until very recently.

Now, you have this inventory being sent out. What is going to happen is not that one company is going to give more information than another. What is going to happen is that the inventory is going to be "coordinated by the trade association." And this will give the trade association an even greater role in this type of process, quite clearly I think raising antitrust problems.

But why do we have to do something to raise further antitrust problems and put that burden on the Antitrust Division with all its delays and complications?

That's why I think that we have just got to move right away with proposals to require the submission of this data, and if it involves an enactment of legislation, then that should be commenced right away. Just, if anything, as a standing alert to industry that this is what is going to come to pass if they coordinate at too low a level of responsibility in terms of their disclosures.

Mr. **Reuss.** Is the Center for the Study of Responsive Law prepared to produce some responsive law by undertaking a draft of such legislation?

Mr. **Nader.** No; the center just studies and investigates these problems. It leaves the legislation up to Members of Congress and the Legislative Reference Service and other skilled people who I think could do the job.

Mr. **Reuss.** Thank you very much for your testimony. We appreciate it, as always.

We now stand in adjournment.

(Whereupon, at 12:35 p.m., the subcommittee adjourned subject to the call of the chairman.)

APPENDIXES

APPENDIX 1.—COMMUNICATION SUBMITTED BY WILLIAM H. RODGERS, JR., ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF WASHINGTON LAW SCHOOL, SEATTLE, WASH.

SCHOOL OF LAW,
UNIVERSITY OF WASHINGTON,
Seattle, Wash., September 28, 1970.

Hon. HENRY S. REUSS,
Chairman, House Conservation and National Resources Subcomittee, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN REUSS: I understand that your committee is conducting hearings on the question of the prolonged delay in the implementation of proposals to establish a national industrial water pollution inventory. I am engaged in research on this and related issues and would hope that you would include these observations in the record:

(1) THE NEED FOR THE INVENTORY

There can be no greater insult to the depth of knowledge in the field of water pollution than to recite the frustrating, demeaning, and utterly unproductive efforts to secure a national inventory of water wastes that have engaged the energies of numerous Federal officials over the past decade. "It seems quite clear to me that * * * an inventory, combined with the national inventory of water pollution control facilities, is an essential step toward the initiation of corrective actions."[1] So said President Dwight David Eisenhower in a memorandum to his Secretary of State on May 13, 1960, calling for an inventory of wastes from Federal installations, an undertaking that was concluded in just over a year.

The need for an industrial inventory was stressed in 1963 by Murray Stein, then Assistant Chief and Chief Enforcement Officer, Division of Water Supply and Pollution Control, PHS, and now Assistant Commissioner for Enforcement, FWQA: "Until you pinpoint your installations, your discharge, the type and volume of waste, you really can't move."[2] In full accord at the same hearings was James M. Quigley, who was then an Assistant Secretary, Department of HEW and is now a vice president, U.S. Plywood-Champion Papers, Inc: "I have a feeling that this is one of the bald spots, this is one of the areas we do not have as up-to-date and as complete and as informed information as we would like to and as we need if we are going to make intelligent decisions on where to act and where not to act."[3]

Over the years, these and similar allegations have been monotonously consistent. The "greatest deficiency in basic information on estuaries," reports the Secretary of Interior in the 1970 National Estuarine Pollution Study "is the lack of water quality data."[4] Moreover, the same study points out that water quality data are of "severely limited value" unless "coupled with data on the sources of pollution which may affect water quality."[5] Unfortunately, information on individual waste effluents is "extremely limited." In particular, "knowledge of the characteristics of individual industrial waste discharges is very poor, and data on them are extremely scattered."[6]

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[1] Hearings before the Natural Resources and Power Subcommittee, Water Pollution Control and Abatement, 88th Cong., first sess., pt. 1A, at 81 (1963) (hereinafter cited as "1963 hearings").

[2] 1963 hearings at 94.

[3] 1963 hearings at 61.

[4] S. Doc. 91–58, 91st Cong., second sess. 549 (1970) (hereinafter cited as "estuarine study").

[5] Estuarine study at 549.

[6] Id. at 530.

This informational chasm deserves special emphasis. The State agencies, now the primary sources of effluent data, often are distressingly uninformed. A recent examination by the Comptroller General of the State permit files on 80 industrial plants discharging wastes into one river showed that many did not contain information on BOD, volume of wastes or suspended solids. "Information on BOD was contained in the permit files for only 30 plants and information on the volume of wastes was contained in the files for 52 plants. However, for 22 of the 52 plants, the files did not contain sufficient information * * * to ascertain the nature and volume of the wastes which were permitted to be discharged into the river." [7]

As for the more exotic compounds, our ignorance is abysmal. To choose one illustration among many, recent questionnaire surveys of chemical industry wastes show a variation in solid waste generation factor of almost 2 to 1.[8] That this is most ominous is indicated by a report of the Manufacturing Chemists' Association in 1965 that waterborne wastes were produced by over 5,000 separate chemical processes, a number obviously increasing in a rapidly expanding industry with each passing year.[9]

In short, the biological and chemical assault upon the Nation's water resources poses complex, diverse, rapidly changing scientific and legal challenges. Our current blindness makes prediction easy—last year it was a DDT crisis, this year mercury, next year cadmium, arsenic, lead, polychlorinated biphenyls, one guess is as good as the next.

(2) THE REASONS FOR THE DELAY

I would like to recite some of the recorded obstacles to the pursuit of a Federal inventory, not to air old grievances, but to highlight dangers that lie ahead. The politics of procrastination in the Bureau of the Budget have been spelled out fully by Mr. Vic Reinemer in the July 3 issue of Science.[10] By 1968, the patience of the House Natural Resources and Power Subcommittee had worn sufficiently thin to inspire these caustic comments: "[i]t is disgraceful, that the national industrial wastes inventory proposed by [the subcommittee] has been delayed and obstructed for over 4 years." [11] It is disgraceful, unconscionable and inexcusable for such an inventory now to be further delayed after over 6 years. Though I understand that Commissioner Dominick has informed the committee that FWQA will initiate a voluntary inventory shortly, the problems are by no means overcome.

Some committee members may recall how the affected industries responded to a question put by staff counsel during the 1963 water pollution hearings asking whether they would cooperate with a Public Health Service sponsored inventory of industrial waste sources and treatment practices. A representative of the National Coal Association wanted no part of Uncle Sam: "A burned child fears the fire. I am very careful about how far I stick my neck out inviting the bureaucrats or giving them an excuse to use anything I may have to whip me over the back." He would rather work "as a team" with State officials "as compared to having the big Government walk in and say: 'Henceforth you do it this way or that way.' " [12] The pulp and paper industry preferred flattery: "I don't think an inventory would be helpful," said Richard M. Billings of Kimberly-Clark Corp., "because of the fact that most of the State agencies have that information already." [13] "We have grown to respect the firm, tough but fair men who serve in the State agencies," [14], volunteered a representative of Scott Paper Co. speaking without reference to the inventory. A representative of the iron and steel industry had several responses: "Well, I don't quite see what useful purpose this [inventory] might serve."

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[7] Comptroller General's report to the Congress, "Examination Into the Effectiveness of the Construction Grant Program for Abating, Controlling, and Preventing Water Pollution," B–166506, November 1969, p. 60.

[8] California Governor's task force on solid waste management, report of the hazardous wastes working group, January 1970, p. 13, in hearings on S. 2005 before the Senate Subcommittee on Air and Water Pollution, 91st Cong., second sess., pt. 5 at 2606 (1970).

[9] National Association of Manufacturers, "Water in Industry" 58 (1965).

[10] Budget Bureau: "Do Advisory Panels Have an Industry Bias?" 169 Science 36 (1970).

Subcommittee note.—The article cited in footnote 10 is reprinted in app. 5 of this hearing record.

[11] H. Rept. 1579, "The Critical Need for a National Inventory of Industrial Wastes (Water Pollution Control and Abatement)," 90th Cong., 2d sess., 13 (1968).

[12] 1963 hearings at 818.

[13] Id. at 734.

[14] Id. at 704.

I think that in practically all instances the States in which the steel manufacturing facilities are situated are fully aware, through their periodic inspections, of the location of all these discharges. "Would your industry be willing to cooperate [with HEW] in assembling such an inventory?" insisted a questioner. "Well, let me answer this in two ways. One, I can't commit the steel industry to do anything. These surveys of the sort that you describe are very expensive." The second answer, though it took some verbal jousting, was essentially, "we'll supply HEW with information the States already have." [15]

To these reasons of fear of Federal bureaucrats, utmost respect for the prerogatives of State officials and concern about expense and duplication were added others in later years. Concern was expressed in 1964 that the data could be "misused for political purposes" by the press and others. And, of course, there is a "real problem relating to the disclosure of confidential information." [16] Not to be overlooked either was the fact that "industry would have to assume that the data will be used against them and even be used in court" and that is another way of saying no data will be forthcoming.[17]

To this lengthy list of hackneyed make-weights could be included a fundamental philosophical objection to the disclosure of data about waste effluents. Pollution is a "relative thing" according to this industrial explanation. "[It] is the discharge of material that unreasonably impairs the quality of water for maximum beneficial use in the overall public interest." [18] Explains the National Association of Manufacturers, "This definition of pollution hinges on the word 'unreasonably.' Economic, sociological and political factors will inevitably influence any attempt to agree upon an interpretation." [19] Over the years this philosophy, still largely reflected in the Federal Water Pollution Control Act, insists upon the premise that waste disposal up to the point of demonstrable damage is a permissible use of the waterways. The message to FWQA has been "look at the fish, look at the birds, look at the water, but don't look at the source." It is this industry concept that has been challenged directly by the committee, first, by urging strict public and private enforcement of the Refuse Act of 1899 whose flat prohibitions plainly contradict the view that a certain amount of pollution is acceptable and, second, by insisting upon an inventory of effluent sources. Also indicative of an abandonment of the fixation on water quality data at the expense of discovering what is going into the water is the administration's decision to back effluent standards. It deserves emphasis, then, that this Federal inventory is coming at a time when control at the source is gaining new currency in water quality circles.

(3) INVENTORY SHOULD BE UNCONDITIONAL

Given the demonstrated reluctance on the part of affected industries to disclose relevant data, I would urge the committee to resist any efforts to render the inventory useless for the purposes for which it can justifiably serve. If experience is a barometer, there will be suggestions that the data supplied to FWQA be withheld from the general public. Recommendations may be made that FWQA stipulate that the information never will be used in a governmental enforcement proceeding. You may be told that the responses should be coded so that, though the data is known, it cannot be connected up to a specific source. There may be proposals that the information be published in survey form so as to minimize, once again, any onus on a particular plant.

All of these submissions will be backed by allegations of trade secrets, irresponsible media, meddling academicians and politically motivated enforcement officials. In short, I suspect that efforts will be made to render the inventory useless for enforcement, of dubious value for study and impossible to verify.

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[15] Id. at 747–748.

[16] Minutes of the Panel on Proposed U.S. Public Health Service Survey of Industrial Waste Water Disposal, June 9, 1964, in Hearings on Presidential Advisory Committees before the House Special Studies Subcommittee, 91st Cong., second sess., 143–144 (1970).

[17] Minutes of the panel on proposed survey, Aug. 13, 1968, supra note 16, at 147.

[18] 1963 hearings at 742 (testimony of Richard D. Hoak, on behalf of the American Iron & Steel Institute).

[19] Water in Industry 22 (1965).

I would urge the committee to resist these pressures. Legitimate legal claims to confidentiality can be litigated after the fact. Compromising on issues of secrecy as a condition of securing the inventory would be misleading to industry and a disservice to improved water quality control. Far better would it be to have the plants surveyed reject a comprehensive, voluntary inventory than to embrace a toothless, superficial proposal that will be used to fend off sterner measures for still another decade.

It is understandable that the effluent from the atomic works at Hanford, Wash., is classified information. It is incomprehendable that the pollution problems of other water-using industries are similarly classified. For too long, industrial secrecy has barred responsible legal and scientific investigations into the debauchery of the Nation's waterways.

Yours very truly,

William H. Rodgers, Jr.,
Associate Professor of Law.

Appendix 2.—Correspondence Between Subcommittee and Federal Agencies Re: A National Inventory of Industrial Wastes

1. Letter of June 10, 1963, From Natural Resources and Power Subcommittee to Then Secretary of Health, Education, and Welfare Anthony J. Celebrezze, First Recommending Establishment of a National Inventory of Industrial Wastes

House of Representatives,
Natural Resources and Power Subcommittee of the
Committee on Government Operations,
Washington, D.C., June 10, 1963.

Hon. Anthony Celebrezze,
Secretary of Health, Education, and Welfare, Department of Health, Education, and Welfare, Washington, D.C.

Dear Mr. Secretary: On June 4 and 5, 1963, at the hearings held before the Natural Resources and Power Subcommittee of the Committee on House Government Operations, several representatives of various industries agreed to cooperate with the Department of Health, Education, and Welfare in compiling an inventory of industrial waste treatment practices and discharge points for their respective industries.

These included representatives of the Kimberly-Clark Corp., the National Coal Association, the Manufacturing Chemists' Association, Inc., the American Petroleum Institute, and the Pure Oil Co. The representative of the American Iron and Steel Institute also agreed to make available data already compiled.

The subcommittee welcomes and appreciates these offers of cooperation on the part of industry. We have learned in our hearings (a) that the Department of Health, Education, and Welfare has inventories on waste treatment practices and discharge points for both municipalities and Federal installations which provide essential basis for dealing with their respective pollution problems, but (b) that the Department does not have such information as to individual wastes, although such data is needed to provide a more complete and accurate picture of existing and potential problem concerning industrial pollution.

The subcommittee hopes that your Department will promptly initiate conversations with these industries for the purpose of making cooperative arrangements to compile such inventories of industrial waste treatment practices and discharge points as you deem necessary.

We would appreciate being advised as to progress in this matter.

Sincerely yours,

Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee.

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2. Letter of August 26, 1966, From Subcommittee to Then Secretary of the Interior Stewart L. Udall, Urging That Interior Department Develop a "Continuing and Comprehensive Inventory of Industrial Discharges Containing Data at Least as Comprehensive as the Data" Now Collected for Municipal Waste Discharges; and Replies of October 29 and December 28, 1966, From Secretary Udall to Subcommittee, Agreeing That an Inventory Is Needed

House of Representatives,
Natural Resources and Power Subcommittee of the
Committee on Government Operations,
Washington, D.C., August 26, 1966.

Hon. Stewart L. Udall,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

Dear Mr. Secretary: If the national program of water pollution control and abatement is to be effectively implemented in the years immediately ahead, I believe it is imperative that your Department develop at this time a continuing and comprehensive inventory of industrial waste discharges containing data at least as comprehensive as the data you now collect concerning municipal waste discharges.

Information on the nature and quantity of waste discharges by industries is essential to vigorous and decisive advancement of the water pollution program. As we move closer to the core of the water pollution problem, it becomes increasingly urgent that complete and up-to-date information on industrial wastes be readily available.

In 1963, shortly after the Subcommittee on Natural Resources and Power held its first series of hearings on water pollution, I urged the Public Health Service to establish an inventory of industrial waste discharges. The Public Health Service then proceeded to develop such an inventory program in cooperation with the State water pollution control agencies, but the Budget Bureau did not approve the questionnaire form, largely because many industry representatives opposed the project. The Budget Bureau's negative action at that time has, in my judgment, substantially hampered progress in abating water pollution.

Certainly, the lack of an inventory on industrial wastes places the Federal Water Pollution Control Administration at a disadvantage. For example, at recent hearings on water pollution held by the subcommittee in Rochester, N.Y. (July 22, 1966), and in Syracuse, N.Y. (Aug. 19, 1966), charges were leveled against the FWPCA that data in its presentations concerning industrial waste discharges were erroneous.

Happily, there is reason to believe that the attitude of our leading industries has altered, and that they are prepared, generally, to cooperate more fully with Federal and State pollution control agencies.

For example, at the Lake Erie water pollution abatement conference held in Cleveland in August 1965, seven large industries situated in Ohio agreed to make available to the Public Health Service data on their industrial wastes discharges These industries were E. I. Du Pont de Nemours & Co., Inc.; Harshaw Chemical Co.; Republic Steel Corp.; Sherwin-Williams Co.; Standard Oil Co. (Ohio); Sun Oil; and the United States Steel Corp. Subsequently, the Jones & Laughlin Steel Corp. also agreed to make industrial wastes data available to PHS.

I then wrote to Secretary Gardner of the Department of Health, Education, and Welfare and to the Director of the Budget Bureau, pointing out that these eight large industries in the Lake Erie Basin had agreed to provide information on their waste discharges to the Public Health Service. I urged that in light of this development the time was ripe for another endeavor to establish a national industrial waste discharges inventory.

The Director of the Budget Bureau responded that in view of the pledges of cooperation by important industries in the Lake Erie region, it had: "encouraged the Public Health Service to proceed promptly with plans for undertaking an inventory of industrial waste in the Lake Erie area, with the expectation that this may be used as a model for covering all waterways in the Nation. We will make every effort to expedite our review of the questionnaire proposed."

Secretary Gardner responded in part as follows: "On the basis of this [Lake Erie area] industry response, we plan to approach the Bureau of the Budget again with a proposal for an inventory of industrial wastes. We are now studying with our field staffs the various ways in which such an inventory could be carried out. It may be best to approach this matter first on a pilot basis, using the Lake Erie drainage area as a model * * *. We will keep the subcommittee informed of any significant developments on this important problem."

If there have been any developments in the preparation of an inventory of industrial wastes since Secretary Gardner's letter of September 9, 1965, either on a regional or a national basis, the subcommittee would appreciate your advising us about them. Three years have elapsed since I proposed the industrial waste discharges inventory program, and almost a full year has elapsed since Secretary Gardner and the Budget Director looked with favor on establishing an inventory program for industrial waste discharge data. In view of the ever-increasing urgency for adequate data concerning industrial waste discharges, we believe that the arguments for prompt development of such an inventory on a national basis are stronger than ever.

We believe that today, due to increased interest in Congress, understanding by business, support from the public, and the impetus of the President's program to clean up the Nation's waters, the vast majority of the industries throughout the country would cooperate with your Department in developing an inventory of industrial waste discharges. I note that the inventory on Waste Water Disposal by Connecticut Industries compiled by the Public Health Service and the Connecticut Water Resources Commission (U.S. Government Printing Office, 1964) contains considerable water flow and wastes information for 2,133 specifically named Connecticut industries. Such information, nationwide, and supplemented by additional data about the character of the waste emissions and the resultant water quality, would substantially aid the accomplishment of the national goal of more effective water pollution control and abatement. The preparation of such inventory would stimulate industries to expedite their water pollution control efforts. It would also enable your Department to deal more effectively and intelligently with the pollution problems resulting from industrial waste discharges.

I have still another reason for urging this proposal. I am supporting an amendment to the pending Clean Rivers Restoration and Water Pollution Control Program bill, to authorize you to make grants for research and demonstration proects for preventing water pollution by industry, which will have industrywide application. I believe that the availability of a national inventory of industrial waste disposal practices would be essential to the most effective administration of the research and demonstration grant program envisaged in my amendment. If you don't know what the problems are, how can you develop solutions?

Let me emphasize again my firm conviction that such an inventory on a national basis is essential if we are to make significant advances in our struggle to improve and preserve our vital water resources.

I hope you will give this matter the urgent consideration it deserves.

Sincerely,

ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 29, 1966.

Hon. ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. JONES: This is in further reply to your letter of August 26, 1966, in which you discuss the need for industrial waste information and urge that a comprehensive inventory of industrial waste discharge be undertaken on a national basis.

I agree wholeheartedly with your views on the need for adequate information on the industrial waste pollution situation. In addition to the values of a national inventory cited in your letter, such data are essential in meeting our responsibilities for developing and managing comprehensive action programs in river basins, support of Federal enforcement programs, administration and compliance activities in connection with the new water quality standards requirements, and definition and planning relating to research needs.

As I indicated to you in my interim reply of September 2 on this matter, I requested a review of your inventory proposal within the Department and an appraisal of the current situation. This has now been done and the information provided me appears to bring out four basic facts to be considered in action on my part.

1. As a result of our cooperative comprehensive river basin planning activities with State and local governments and industry, Federal enforcement actions, and technical assistance programs, the regional offices of the Federal Water Pollution Control Administration have compiled a substantial amount of industrial waste data. Considerable additional amounts of such data are expected to result from developing the implementation plans required in connection with the water quality standards due for submission June 30, 1967.

2. At the local and regional level, the negative attitude of industry toward revealing data on its waste discharges is diminishing as a result of congressional committee and other hearings that have been held across the country. Federal enforcement actions and their related public relations impact, and discussions with top management at their meetings and on an individual basis by myself, Assistant Secretary Di Luzio and Commissioner Quigley. In this regard, I am pleased to say that hearings held by your Subcommittee on Natural Resources and Power have been especially effective.

3. At the national level, there is no detectable change in the opposition of industry to a national inventory of industrial waste discharges by the Advisory Council on Federal Reports and certain of the larger industrial trade organizations. The Advisory Council, as you will recall, advises the Bureau of the Budget on such matters as national inventories and is the group that has effectively scuttled our previous efforts to obtain approval to establish a national inventory. Their concern appears to center around a fear that data from a national inventory would present a distorted view of industry that is doing a good job and making progress, and that collective use of such data would have an unfair public relations effect on industry as a whole.

4. In June of this year, I approved an organization for the Federal Water Pollution Control Administration that provides for nine regions based on major river basins or major drainage areas which, I believe you agree, is the logical way to organize and administer water resources programs. Previously, the Federal water pollution control program was organized in accord with HEW's State-oriented regions.

I note with real interest the decision of the Congress in considering the new legislation last week to require industries to make a detailed disclosure of their waste discharges at Federal enforcement conferences. This should make the conference a more effective instrument and contribute substantially to information on industrial wastes.

In the light of the above factors, I have requested that each regional office of the Federal Water Pollution Control Administration proceed immediately with the development of an industrial waste inventory for its region, based on: (1) information already in their files, (2) information readily available from State and local governments; and (3) information developed in connection with implementation plans being developed to assure compliance with approved water quality standards. In addition, I am requesting that any problem areas or special gaps in information relating to the inventories be defined. When these latter are defined, and if their significance requires it, I propose to deal directly with industrial management to seek their voluntary cooperation in these matters.

I believe there is a good deal of logic in developing these regional industrial waste inventories and that this can be accomplished in a reasonable length of time. They are a necessary instrument to meeting our program responsibilities and developing real action programs. In their aggregate, the regional inventories will constitute a national inventory and will serve to meet national needs for this information, including those outlined in your letter.

Your interest in a national industrial waste inventory and continued support in all matters of water pollution and its control are very much appreciated.

Sincerely yours,

Stewart L. Udall,
Secretary of the Interior.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., December 28, 1966.

Hon. Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

Dear Mr. Jones: This is in reply to your letter of December 6, 1966, regarding our plans to develop an industrial waste inventory through each regional office of the Federal Water Pollution Control Administration as set forth in my letter to you of October 29, and your request for copies of instructions of compiling this inventory as sent to each regional office.

Subsequent to my October 29 letter, a meeting of all FWPCA regional directors was held in Washington, D.C. At that time the matter of an industrial waste inventory was given further detailed review and discussion in light of the water quality standards requirements under the 1965 amendments, the Clean Water Restoration Act of 1966, and changes in program policy and direction being instituted since the transfer of FWPCA to Interior.

In addition to the reasons given in your letter of August 26, 1966, this review and discussion brought out the following additional compelling reasons why a comprehensive and continuing national inventory of industrial waste discharges is needed.

1. Under the Water Quality Act of 1965, the States are required to adopt water quality criteria applicable to interstate waters or portions thereof within the State, and a plan for their implementation and enforcement. If any State should fail to do so, or should propose inadequate criteria, the Secretary of the Interior is required to promulgate such standards. In either event, adequate industrial waste discharge information will be necessary if a meaningful and effective job of standards-setting is to be done.

2. If the States adopt the criteria, and we believe most of them will, the Secretary is required to review and approve such criteria after which they become the applicable water quality standards. In order to make an adequate determination of the adequacy and applicability of the proposed criteria, and the effectiveness of the implementation plan, I will need available to me good information on industrial waste discharges.

3. The Clean Water Restoration Act of 1966 increased from $5 to $10 million the appropriation authorization for grants to States and interstate agencies to assist them in meeting the costs for establishing and maintaining adequate water pollution control programs. To qualify for its grant, each State or interstate agency is required to submit annually for approval its plan for prevention and control of water pollution. With the increased grants, we intend to require each State or interstate agency to prepare a comprehensive plan that shows extension and improvement of its pollution control program and that is in conformity with its water quality standards implementation plan and with river basin planning. The preparation and execution of such plans, and their review and approval by the Secretary will require the availability of adequate industrial waste discharge data.

4. Under the Clean Water Restoration Act of 1966 (sec. 17), the Secretary is required to furnish to the Congress a report by January 10, 1968, which includes a detailed estimate of the cost of carrying out the act; a comprehensive study of the economic impact on the affected units of Government of the cost of installation of treatment facilities; and a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality standards established pursuant to the act or applicable State law. This will require adequate industrial waste information.

5. Further, section 18 of the 1966 act requires the Secretary to conduct a full and complete investigation and study of methods for providing incentives designed to assist in the construction of facilities and works by industry designed to reduce or abate water pollution, and to report the results to the Congress by January 30, 1968. As in the above, if this responsibility is to be effectively accomplished and helpful to the Congress, good industrial waste discharge data are necessary.

With these considerations and needs in mind, therefore, we have decided to proceed with the development of a national inventory of industrial waste discharges on a continuing basis through the regional offices of FWPCA. We are already preparing the necessary forms and procedures, and will seek their approval by the Bureau of the Budget at the earliest possible date, probably in January. We would expect to shoulder the major share of the burden in compiling the inventory because we do not feel we should ask the States to assume any further burden than they are willing, when at the same time, they are working toward the establishment of effective water quality criteria and implementation plans. We would expect this to be a service to the States, to ourselves, and to your committee.

Should it prove to be necessary, we would like to feel that we have your support in obtaining approval to proceed with this industrial waste inventory.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

3. Letter of January 4, 1967, From Subcommittee to Then Director of the Budget Bureau Charles L. Schultze, Informing Him of Interior Department Plan To Establish an Inventory; and Reply of January 12, 1967, From Then Deputy Director of the Budget Bureau Phillip S. Hughes to the Subcommittee, Assuring That Interior's Proposal "Will Be Analyzed Carefully"

House of Representatives,
Natural Resources and Power Subcommittee of the
Committee on Government Operations,
Washington, D.C., January 4, 1967.

Hon. Charles L. Schultze,
Director, Bureau of the Budget,
Executive Office Building, Washington, D.C.

Dear Mr. Schultze: The Secretary of the Interior has informed me that the Interior Department is planning to develop on a continuing basis a comprehensive inventory of industrial waste discharges into waterways.

Further, the Secretary said that the Department is "already preparing the necessary forms and procedures and will seek their approval by the Bureau of the Budget at the earliest possible date, probably in January."

I want to express my strongest support for the Secretary's proposal which is fully consonant with the national program of water pollution control and abatement as developed by President Johnson. Certainly, information on the nature and quantity of waste discharges by industries is essential to the vigorous and decisive advancement of the water pollution program.

I am confident that the Budget Bureau will give this proposal the urgent and favorable consideration it deserves.

If I, or members of the subcommittee staff, can be helpful in discussions of the inventory proposal, please let me know.

Sincerely,

Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee.

Executive Office of the President,
Bureau of the Budget,
Washington, D.C., January 12, 1967.

Hon. Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Thank you for your letter of January 4, 1967, in which you stated your support for the Secretary of the Interior's proposal to develop a comprehensive inventory of industrial waste discharges into waterways.

The Bureau of the Budget appreciates and shares your concern for water pollution control and abatement, and realizes that classification and quantification of pollutants entering streams is a significant component of information required to attack this grave problem.

Any proposals that the Department of the Interior may submit to the Bureau of the Budget will be analyzed carefully.

Sincerely,

Phillip S. Hughes,
Deputy Director.

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4. Letter of March 14, 1967, From Subcommittee to Secretary Udall, Inquiring About Status of Inventory; and Reply of April 13, 1967, From Secretary Udall to Subcommittee, Advising That Interior Was Proceeding To Prepare Revised Questionnaire

House of Representatives,
Natural Resources and Power Subcommittee
of the Committee on Government Operations,
Washington, D.C., March 14, 1967.

Hon. Stewart L. Udall,
Secretary of the Interior, Department of the Interior,
Washington, D.C.

Dear Mr. Secretary: In your letter of December 28, 1966, you informed me that you "have decided to proceed with the development of a national inventory of industrial waste discharges on a continuing basis through the Regional Offices of FWPCA [and] are already preparing the necessary forms and procedures, and will seek their approval by the Bureau of the Budget at the earliest possible date, probably in January".

I would appreciate copies of the instructions you have sent to the Regional Offices concerning the development of the inventory of industrial waste discharges.

In addition, I would appreciate knowing the current status of the Interior Department's consultations with the Budget Bureau on this matter.

You will want to know that the Director of the Budget Bureau to whom I wrote expressing my full support for your proposed national inventory of industrial waste discharges, has advised me that the Budget Bureau "appreciates and shares" my concern and recognizes that the information to be developed by such inventory "is a significant component of information required to attack this grave problem" of water pollution control and abatement.

Thank you for your cooperation.

Sincerely,

Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 13, 1967.

Hon. Robert E. Jones,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

Dear Mr. Jones: This is in further reply to your letter of March 14, 1967, with regard to progress toward a continuing inventory of industrial waste discharge practices.

Since my letter of December 28, 1966, the Federal Water Pollution Control Administration has considered alternate forms and procedures aimed at securing a timely, meaningful response. The Assistant Commissioners for Research, Comprehensive Planning, Technical Programs, Enforcement, and Program Planning, have met to consider the several proposals and have in turn directed key staff to develop specific questions which will, when answered, assist in each of these major program activities.

The technical staff of FWPCA considered the form which was proposed some three years ago by comparison with new legislative responsibilities contained in the Water Quality Act of 1965 and the Clean Water Restoration Act of 1966. Using the old form as a guide, specific new questions are being developed. The technical staff is currently scheduled to meet April 11, 1967, to coordinate questions which will make a meaningful input to the several FWPCA programs. As soon as this coordination has been effected, a new form will be submitted to the Bureau of the Budget for approval.

Our inaugural effort as part of the continuing industrial waste inventory will be directed at installations which account for 90 percent of the manufacturing industrial discharges to the Nation's streams. This percentage includes six 2-digit manufacturing code-groups including the largest water users as identified in the "1963" Census of Manufacturers—Water Use in Manufacturing." By limiting initial coverage to this group, approximately 6,000 plants, we believe that a timely response will be developed which will give us a handle on the industrial waste discharge situation in the United States, at least as it is related to major discharges. Other manufacturing groups and industries will be brought under the umbrella as quickly as possible to fill out the picture both as regards the quantity and quality of wastes being discharged directly to waterways and the number of locations involved.

We believe we both sense a change in the general attitude of industry toward the need for a firm industrial waste discharge data base. Assistant Secretary Di Luzio has spoken to several groups within the last month, including the California Municipal Utilities Association and the North American Wildlife and Natural Resources Conference. In each instance, he has indicated that if industry expects us to help them, they must assist us by providing information about the chemical composition of their waste discharges and about the nature of the processes which generate these effluents. We trust that we will be able to get their cooperation. This inventory will certainly give industry an opportunity to indicate the extent of cooperation we can expect in the years to come.

We appreciate your continued interest on our behalf and will advise you just as soon as we have submitted the industrial waste form to the Bureau of the Budget.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

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5. LETTER OF JULY 21, 1967, FROM SUBCOMMITTEE TO BUDGET BUREAU DIRECTOR SCHULTZE, RE STATUS OF BOB'S EVALUATION OF QUESTIONNAIRE FORM SUBMITTED TO IT ON APRIL 21, 1967, BY INTERIOR DEPARTMENT; AND REPLIES OF AUGUST 4, 1967, AND JULY 26, 1968, FROM DEPUTY DIRECTOR HUGHES TO SUBCOMMITTEE, ADVISING THAT (A) TWO STATUTORY STUDIES MUST BE COMPLETED BEFORE BOB "WILL BEGIN" ITS REVIEW OF QUESTIONNAIRE FORM, AND (B) ADVISORY COUNCIL ON FEDERAL REPORTS WILL REVIEW THE FORM ON AUGUST 13, 1968

HOUSE OF REPRESENTATIVES,
NATURAL RESOURCES AND POWER SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 21, 1967.

Hon. CHARLES L. SCHULTZE,
Director, Bureau of the Budget,
Executive Office Building, Washington, D.C.

DEAR MR. SCHULTZE: I would appreciate your advising me as to the status of the Budget Bureau's evaluation of the proposal, submitted to the Bureau on April 21 by the Department of the Interior, to establish a continuing national inventory of industrial waste discharges into waterways. As you know our subcommittee has long urged the establishment of such an inventory.

Thank you for your cooperation.

Sincerely,

ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 4, 1967.

Hon. ROBERT E. JONES,
Chairman, Subcommittee on Natural Resources and Power, Committee on Government Operations, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. JONES: This is in reply to your letter of July 21, 1967, regarding the national inventory of industrial waste discharges.

As you know, the Clean Water Restoration Act of 1966 requires a comprehensive study of the cost of pollution control, including industrial pollution; and a study of possible economic incentives for industry to abate pollution. Both of these studies, due in January 1968, will require significant amounts of data and cooperation from industry.

We do not believe it would be appropriate to request further information from industry through the national waste inventory questionnaire during the same period the other studies are underway. Not only would this be difficult for the firms from which information is requested, but it might jeopardize the cooperation the Department of the Interior receives from them on the two studies underway.

We believe that once data is available from the cost and incentive studies, we will have a much better idea about what types of data are available from industry and how best to structure any potential questionnaire for the industrial inventory. I can assure you that once the cost and incentive studies are completed, we will begin such a review.

Sincerely,

(Signed) PHILLIP S. HUGHES,
Deputy Director.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 26, 1968.

Hon. ROBERT E. JONES,
Chairman, Subcommittee on Natural Resources and Power, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. JONES. Thank you for your letter of July 2, 1968, attaching a report of the Natural Resources and Power Subcommittee entitled "The Critical Need for a National Inventory of Industrial Wastes (Water Pollution Control and Abatement)."

In that letter, you called our attention to the principal recommendations of the report, and asked us to advise you on the actions being taken to carry out the recommendations.

We have been working with the Department of the Interior on an industrial wastes inventory for some time. In an undertaking of this magnitude it is necessary to assure that this questionnaire is fully coordinated with data gathering activities of other agencies, and that the data requests are clear and reasonable. As a result of discussions between the Bureau of the Budget and the Federal Water Pollution Control Administration and subsequent analysis by FWPCA of its requirements, it was possible to simplify and improve the questionnaire.

The revised questionnaire will be reviewed by an ad hoc task force on water use data of the Water Resources Council on July 30, 1968. It will also be reviewed by an industry advisory group of the Bureau's Advisory Council on Federal Reports on August 13, 1968. Once this latter review has taken place, it should be possible to take expeditious action on the industrial wastes questionnaire.

We appreciate your interest and hope that this information indicates how we are proceeding.

Sincerely,

PHILLIP S. HUGHES,
Deputy Director.

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6. LETTER OF JULY 31, 1968, FROM SECRETARY UDALL TO SUBCOMMITTEE, ADVISING THAT "EXPEDITIOUS CLEARANCE OF THE FORM" IS ANTICIPATED AFTER MEETING OF ADVISORY COUNCIL

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 31, 1968.

Hon. ROBERT E. JONES,
Chairman, Natural Resources and Power Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. JONES. I am pleased to advise you that significant progress is being made toward initiating a national inventory of industrial waste water disposal practices, which you have strongly supported and which you have again recommended in your letter of July 2, 1968.

Personnel of the Federal Water Pollution Control Administration have been in close touch with the Bureau of the Budget since early this year when the special FWPCA studies, which caused that agency to defer approval of the proposed 1967 inventory, neared completion. Subsequently, the 1967 form, which already incorporated changes recommended by industry, was again reviewed extensively within FWPCA and an improved but simplified version was submitted to the Bureau of the Budget for clearance. We have been advised that the form must be reviewed by other interested Federal agencies and by the Advisory Council on Federal Reports and that meetings with the two groups have been scheduled for July 30 and August 13, 1968, respectively. Department of the Interior representatives will be present at these two meetings to help resolve differences of opinion which may evolve.

It is anticipated that expenditious clearance of the form will be forthcoming after conclusion of the above two meetings. On receipt of such clearance, I shall personally sign letters to the heads of a selected group of the Nation's largest corporations urging their cooperation in this critical inventory. Corporations selected will be those involving industries using the largest volumes of water as identified in the Bureau of the Census' 1963 "Water Use in Manufacturing."

The initial effort will be augmented by additional communications from FWPCA regional directors to survey 10,000 plants, accounting for about 93 percent of the Nation's industrial water use.

In the course of reviewing the 1967 form, FWPCA consulted with the Bureau of the Census, Department of Commerce. The revised form reflects nomenclature and definitions of water supply and discharge points which are as compatible as possible with those used in the census of manufacturers. In addition, collection of data by the Bureau of Census for our use, has been discussed. Under the "disclosure" rule, data collected by the Bureau of Census, is not releasable when associated with a specific plant. We have been informed, however, that ways will be sought to allow the Bureau to act as a contractor in the collecting capacity, and to make the resulting data available for unlimited use by the requesting agency. Needless to say, we feel the inventory is too urgent to postpone pending this development.

With respect to recommendation No. 3 of your July 2 letter, earlier this year FWPCA initiated an updating of the municipal waste treatment facilities inventory as of January 1, 1968, and this does call for some effluent quality data. We are also devising means of keeping both municipal and Federal inventories updated on a current basis. As we accomplish this, we intend to include additional indexes of treatment plant effectiveness in the form of influent and effluent quality data.

Thank you for your continuing interest in establishing a realistic picture of the amounts and types of wastes discharged into our national waterways.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

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7. LETTER OF FEBRUARY 28, 1969, FROM CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE TO FEDERAL WATER POLLUTION CONTROL ADMINISTRATION COMMISSIONER JOE G. MOORE, JR., ENCLOSING LETTER TO INTERIOR SECRETARY WALTER J. HICKEL REQUESTING STATUS OF INVENTORY, AND STATING THAT BLANKET CONFIDENTIALITY WOULD "SUBSTANTIALLY UNDERCUT THE USEFULNESS" OF THE INVENTORY; AND LETTER OF APRIL 22, 1969, FROM ASSISTANT SECRETARY CARL L. KLEIN, STATING THAT HE IS GIVING "PRIORITY ATTENTION" TO RESOLUTION OF "THIS COMPLEX ISSUE" OF CONFIDENTIALITY

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., February 28, 1969.

Mr. JOE G. MOORE,
Commissioner, Federal Water Pollution Control Administration, Department of the Interior, Main Interior Building, Washington, D.C.

DEAR MR. MOORE: Enclosed are copies of letters I have today written to the Secretary of the Interior, and to the Director of the Bureau of the Budget, urging the prompt establishment of a national inventory of industrial wastes.

I have read with great interest your remark of February 18 before the paper industry's Council for Air and Stream Improvement, in which you supported the establishment of such a national inventory.

Your remarks also mentioned that the Department is considering whether to adopt the position urged by some industry representatives that the information obtained by such inventory be classified as confidential.

We believe that a rigid confidentiality provision would substantially undercut the usefulness of an industrial wastes inventory. While there may, in some unusual cases, be justification for holding such information confidential, we believe that such information generally does not require confidential treatment, and that confidentiality should therefore be accorded only where there is clear showing that the FWPCA's use or disclosure of the inventory information will substantially impair bona fide trade secrets of the informant.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

[NOTE.—The letter to the Director of the Budget Bureau, similar to that addressed to the Secretary of the Interior, is in the subcommittee files. The letter to Secretary Hickel follows:]

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., February 28, 1969.

Hon. WALTER J. HICKEL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: On June 24, 1968, the House Committee on Government Operations issued a report entitled "The Critical Need for a National Inventory of Industrial Wastes" (H. Rept. 1579, 90th Cong.). Enclosed are three copies of that report for your information. The report was based on a study by the Natural Resources and Power Subcommittee, chaired by Hon. Robert E. Jones.

Because of increasing congressional obligations, Congressman Jones felt that he could no longer continue as chairman of that subcommittee. Consequently, the Conservation and Natural Resources Subcommittee, which I have the honor to chair, has been established in the 91st Congress to carry on this work.

We are concerned that the industrial wastes inventory be established and become fully operative as expeditiously as possible.

Enclosed for your information are copies of the letters I have today sent to the Director of the Bureau of the Budget, and to the Commissioner of the Federal Water Pollution Control Administration, concerning this matter.

We would appreciate hearing from you at your earliest convenience as to (1) your position with regard to the committee's recommendations (see p. 3 of the report), and (2) the present status of the national industrial wastes inventory.

We look forward to working with you on the many matters of mutual concern in which this subcommittee and the Department of the Interior will be involved.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 22, 1969.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN REUSS: Your letter of February 28, 1969, to Mr. Joe G. Moore, Jr., concerning the establishment of a national inventory of industrial wastes has come to my attention. I wish to assure you that I share your sense of urgency about the necessity of undertaking an inventory as soon as possible.

I have been looking into this matter of confidentiality of the information, and I am giving priority attention to means of resolving this complex issue in a manner which will provide the most reliable and complete information with the least restraint on its use. I plan to make recommendations to Secretary Hickel as soon as possible. You will be hearing further from the Secretary as soon as this issue is resolved.

In his letter of March 17, 1969, Secretary Hickel extended his congratulations to you on your new position of chairman of the Conservation and Natural Resources Subcommittee, and I wish to add my good wishes to his. We look forward to cooperating with the subcommittee.

Sincerely yours,

/S/ CARL L. KLEIN,
Assistant Secretary of the Interior.

8. LETTER OF APRIL 22, 1969, FROM SUBCOMMITTEE TO SECRETARY HICKEL, URGING "EARLY ACTION" ON ESTABLISHMENT OF INVENTORY; AND REPLY OF JULY 30, 1969, FROM ACTING SECRETARY KLEIN, STATING THAT "WE EXPECT TO REACH, WITHIN THE NEXT SEVERAL WEEKS, A FINAL DECISION ON THE DEGREE OF CONFIDENTIALITY THAT WE WISH TO ALLOW"

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 22, 1969.

Hon. WALTER J. HICKEL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: On February 28, 1969, we requested your views on the recommendations of the House Committee on Government Operations that the industrial wastes inventory be promptly established. The committee's recommendations were contained in its report of June 24, 1968, entitled "The Critical Need for a National Inventory of Industrial Wastes" (H. Rept. 1579, 90th Cong.). On March 17 you advised us that you would obtain your staff's views as soon as possible and advise us of your views.

Industrial wastes are a major source of pollution of our Nation's wastes. In view of the increasingly urgent need for establishing the necessary information essential for governmental efforts to reduce such pollution, your early action to establish such an inventory would materially aid the Nation's struggle to abate industrial pollution of our waterways.

We hope that you will let us have your views on this important matter very soon.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 30, 1969.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This letter is in further response to your letter of April 22, 1969, concerning a national inventory of industrial wastes. I am pleased to furnish you the following information on the background and current status of our efforts to develop the procedures and questionnaire necessary to conduct such an inventory.

In July, 1968, the Federal Water Pollution Control Administration initiated action to develop an inventory questionnaire by filing a formal application with the Bureau of the Budget. As you know, all agencies of the executive branch must secure the Bureau's approval prior to initiating inventories addressed to non-Federal agencies or individuals. Subsequently, at the request of the Bureau, meetings were held with representatives of interested Federal agencies and industry to discuss the objectives and the proposed procedures and questionnaire of the inventory.

The only point of contention arising from these meetings, which could not be resolved, was the request by industry that data submitted via the questionnaire be considered confidential. This request has been the subject of intensive study by my staff and FWPCA, and we have carefully considered the effects that confidentiality might have on the inventory responses we would receive from industry and on our requirements for use of the data collected. We have also examined the effects that nonconfidentiality might have on responses and our requirements, and we have taken cognizance of the position of your committee which was expressed in your letter of February 28, 1968, to the former Commissioner of FWPCA.

At the present time, we are giving final consideration to two alternative approaches: nonconfidentiality and limited-confidentiality. With respect to the latter, we have looked at the confidentiality clause currently being used by the

National Air Pollution Control Administration in the survey of industrial air emissions. We have had the Department's Solicitor review this clause and we are now studying his opinion. We expect to reach, within the next several weeks, a final decision on the degree of confidentiality that we wish to allow, and we will make our recommendation to the Bureau of the Budget. It is my understanding that this recommendation will enable the Bureau to take final action on our proposed questionnaire. I will inform you of the outcome of this action as soon as it is known.

Sincerely yours,

Carl L. Klein,
Acting Secretary of the Interior.

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9. Letters of February 9 and March 23, 1970, From Subcommittee to Secretary Hickel, Again Requesting Present Status of Inventory; and Reply of May 7, 1970, From Secretary Hickel, Stating That Interior Department Is Re-Examining Federal Water Quality Administration's Plan to Conduct Inventory

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., February 9, 1970.

Hon. Walter J. Hickel,
Secretary of the Interior,
Department of the Interior, Washington, D.C.

Dear Mr. Secretary: In 1968, the Committee on Government Operations issued a report entitled, "The Critical Need for a National Inventory of Industrial Wastes" (H. Report 1579, 90th Cong. June 24, 1968), which urged the Interior Department to establish such an inventory promptly.

Last year we wrote to you several times (February 28, April 22, and July 30, 1969) and to the Commissioner of the Federal Water Pollution Control Administration (February 28, 1969), asking your position on, and the current status of, the national inventory of industrial wastes. We later received letters dated April 28 and July 30, 1969, from Assistant Secretary Klein on this subject. Mr. Klein's July 30 letter explained that meetings with the Bureau of the Budget on a proposed inventory questionnaire were held with the Department of the Interior and other Federal agencies and that the "only point of contention * * * was the request by industry that data submitted via the questionnaire be considered confidential." His letter then said in part:

"At the present time, we are giving final consideration to two alternative approaches: nonconfidentiality and limited confidentiality. With respect to the latter, we have looked at the confidentiality clause currently being used by the National Air Pollution Control Administration in the survey of industrial air emissions. We have had the Department's solicitor review this clause and we are now studying his opinion. We expect to reach, within the next several weeks, a final decision on the degree of confidentiality that we wish to allow, and we will make our recommendation to the Bureau of the Budget. It is my understanding that this recommendation will enable the Bureau to take final action on our proposed questionnaire. I will inform you of the outcome of this action as soon as it is known."

We have not heard from either you or from Assistant Secretary Klein since his letter of July 30, 1969. Over one and one-half years have lapsed since the Committee's report was issued urging the establishment of the National Inventory of Industrial Wastes which would substantially aid your Department and the States in establishing water quality standards and improving the quality of our environment.

We would appreciate your promptly advising us:

(a) What has the Department done since July 30, 1969, toward establishing the National Inventory of Industrial Wastes?

(b) What "degree of confidentiality" will you allow concerning the data submitted pursuant to the proposed questionnaire? In this connection, I call to your attention the following sentences in my letter to Commissioner of FWPCA of February 28, 1969:

"We believe that a rigid confidentiality provision would substantially undercut the usefulness of an industrial wastes inventory. While there may, in some unusual cases, be justification for holding such information confidential, we believe that such information generally does not require confidential treatment, and that confidentiality should therefore be accorded only where there is clear showing that the FWPCA's use or disclosure of the inventory information will substantially impair bona fide trade secrets of the informant."

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., March 23, 1970.

Hon. WALTER J. HICKEL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: On February 9, 1970, we sent a letter to you citing the long-continued effort by our committee to have the Interior Department establish a national inventory of industrial wastes (as recommended in H. Rept. the long-continued effort by our committee to have the Interior Department and the States to establish and enforce water quality standards. Our letter also cited the letters which I sent to you on February 28, April 22, and July 30, 1969, asking your position on, and the current status of, that inventory. We have had no response from your Department since Assistant Secretary Klein's last letter over 7 months ago.

On March 19, Senator Lee Metcalf testified before the Special Studies Subcommittee of this committee concerning the impact which business advisory committees have on the Budget Bureau's role in approving agency questionnaires. During the course of his testimony he cited and discussed the role of industry advisory groups in obstructing approval of the Interior Department's proposed inventory of industrial waste discharges. He then testified as follows:

"Mr. Chairman, I want to advise your subcommittee on the status, as of yesterday, of this 7-year effort to obtain basic information from industry on pollution. The Budget Bureau advised my office yesterday that the new Administrator of the Water Pollution Control Administration had asked to look at the proposed questionnaire. He decided this was not a proper Federal concern. He wants to see if the States can provide the information.

"That attitude by a Federal administrator, starkly illustrates the fact that this administration does not believe in law enforcement against corporations. It is of a piece with the failure to enforce laws and regulations violated by oil companies which pollute our coastal waters. It is of a piece with the tragic Presidential veto, a decade ago, which said that pollution is 'a unique local blight.'

"And the Budget Bureau—I was advised yesterday—has withdrawn consideration of the proposed inventory."

Until now, the Interior Department has repeatedly affirmed to our committee that the Department supported, and was working to advance the proposed national inventory of industrial wastes. In fact, Assistant Secretary Klein, in his letter of July 30, 1969, to our subcommittee said that the only remaining issue involving the questionnaire was whether the industry data would be considered "confidential" and he expected "to reach, within the next several weeks, a final decision on the degree of confidentiality that we wish to allow." He further said that this would "enable the Bureau to take final action" on the questionnaire.

We would appreciate your immediately advising us what has caused the Department's apparent reversal of position as reported by Senator Metcalf. Also please respond to the questions asked in our letter of February 9.

Sincerely,

HENRY S. REUSS,
Chairman,
Conservation and Natural Resources Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 7, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This is in reply to your letters of February 9, 1970, and March 23, 1970, concerning a national inventory of industrial wastes. As you know, the forwarding of significant legislative proposals from this Department pursuant to the President's message on environmental quality, submitted to the Congress on February 11, and the recent promulgation of proposed regulations by me on March 31, 1970, in the Federal Register on page 5346, bear directly on the question of an industrial inventory and on the subject of pollution control information in general. Pertinent to the question as to what we have done, additionally, since July 1968, are the actions described in the following paragraphs.

In connection with the Federal Water Quality Administration's annual report to Congress on "The Cost of Clean Water," comprehensive profiles were prepared on those industrial categories using the greatest amounts of water and constituting the greatest pollutional threat. This information included current and projected discharges of waste waters, amounts of pollutants and estimated costs of abatement. The report provides the basis to analyze the overall abatement problem in the industrial area.

In August 1969 a decision was made to offer limited confidential treatment for data submitted by industry concerning their plants in response to our proposed inventory form which had been previously submitted to the Bureau of the Budget without such a provision. A clause providing the extent of confidentiality was prepared and the form and related instructions were revised for resubmission to the Bureau of the Budget. Meanwhile, we proposed new legislation described in the following paragraphs and resubmission was delayed. Subsequently, the Bureau of the Budget suspended action on approval of the form.

Pending legislation and proposed changes to regulations dictated a reexamination of the plan of the Federal Water Quality Administration to conduct a national inventory of industrial wastes. These pending changes to regulations would require:

(1) That the States provide data on all waste discharges, including industrial, affecting a proposed municipal treatment facility in order to qualify it for Federal financial assistance for construction. From this data provided by the States, we expect to be able to project the desired national inventory of industrial wastes.

(2) That State or interstate agencies show that a proposed municipal treatment facility is a part of a basinwide and a metropolitan or regional water pollution abatement plan to obtain Federal financial assistance.

Other legislation or regulations would require:

(1) Industrial plant discharges to meet water quality standards and other requirements established by the State to qualify for 5-year amortization of the cost of the facility.

(2) Submission of effluent data to secure an Army Corps of Engineers' permit for discharges to navigable waters.

The Federal Water Quality Administration has been working rapidly to accrue industrial waste information consistent with the legislation and regulations and proposals mentioned above. In order to obtain sufficient industrial waste information to implement fully the proposed legislative and regulatory changes, the Federal Water Quality Administration has proceeded to collect available information within the agency and is planning for a full-scale effort to develop, in-house, a total industrial waste inventory. Regional directors have been directed to complete within 3 months a pilot scale inventory for one river basin selected in each region. As soon as this pilot program is analyzed, the means for obtaining a total industrial inventory will be developed by the agency. A determination will be made as to what assistance from the States, if any, in addition to that routinely received under existing programs, will be required.

Information collected in the pilot program will be recorded on a form which has been circulated to all regions and which has been reviewed by other interested Government agencies, a panel of industrial representatives appointed by the President's Advisory Council for Federal Reports and by numerous State and interstate agencies. Since submission of the information to be obtained through use of this form will be mandatory pursuant to the proposed regulations, the requirement for confidentiality no longer appears to be relevant. In anticipation of possible future needs, the form will be resubmitted to the Bureau of the Budget without the confidentiality clauses.

This course of action, we feel, will best produce immediate results for this critical component of our total water pollution control effort.

Sincerely yours,

Walter J. Hickel,
Secretary of the Interior.

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10. Joint Letters of May 28, 1970, from Subcommittee Chairman Henry S. Reuss and Ranking Minority Member Guy Vander Jagt, to Secretary Hickel and Budget Director Robert P. Mayo, Urging that (a) Interior Department Immediately Institute Inventory, and (b) BOB Approve Questionnaire Form

Congress of the United States,
House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., May 28, 1970.

Hon. Walter J. Hickel,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

Dear Mr. Secretary: Thank you for your letter of May 7, 1970, in reply to our several letters urging that your Department establish a national inventory of industrial wastes, as recommended by this subcommittee since 1963 and by the Committee on Government Operations in its report of June 24, 1968 (H. Rept. 90–1579) entitled: "The Critical Need for a National Inventory of Industrial Wastes (Water Pollution Control and Abatement)."

Your letter indicates that the Federal Water Quality Administration will try to assemble industrial waste water data through your methods, and that the Interior Department rejects, at least for the next several months, the idea of obtaining data from industry, by voluntary responses to questionnaires, about the source, volume, composition, and points of discharge of its wastes.

We believe that the long history of the Department's delay in starting a national inventory of industrial wastes, as recommended by the committee, is not consistent with the public's interest in accelerating Federal action to control water pollution and to prevent the degradation of our waters. In light of that history, which we shall here briefly review, we believe your proposed four methods, although good as far as they go, are not adequate and that the committee's recommendations should be followed now.

A. *History of delay in establishing a national inventory of industrial wastes.*

For nearly 7 years, this subcommittee (and its predecessor under Chairman Robert E. Jones) has urged that a national inventory of industrial wastes be established on a cooperative basis with industry. Our first request was made on June 10, 1963, when Chairman Jones wrote to the Secretary of Health, Education, and Welfare (who then administered the Federal Water Pollution Control program), urging such an inventory.

In 1964, that Department agreed with the subcommittee that such an inventory was needed, and it requested the Budget Bureau to approve, as required by the Federal Reports Act of 1942 (as codified in Public Law 90–620, 44 U.S.C., supp. IV, secs. 3501–3511), a questionnaire form to be sent to all dischargers of industrial waste waters. The Budget Bureau "refused to approve the form" because of industry opposition, "thus effectively quashing the proposed inventory." (H. Rept., supra, p. 10).

In 1967, after eight major industries at the Lake Erie Water Pollution Control Conference agreed in August 1965 to provide data on their waste water discharges, the Interior Department asked the Budget Bureau to approve the questionnaire form which was revised to overcome industry objections expressed in 1964. But the Budget Bureau again refused approval on the ground that the Interior Department should first complete two studies required under the Clean Water Restoration Act of 1966 (Public Law 89–573; 80 Stat. 1248); namely, (1) a comprehensive study of the cost of controlling water pollution, including industrial pollution, and (2) a study of possible economic incentives for industry to abate pollution. In a letter of August 4, 1967, to the subcommittee, the Bureau's Deputy Director said:

"We believe that once data is available from the cost and incentive studies, we will have a much better idea about what types of data are available from industry and how best to structure any potential questionnaire for the industrial inventory. I can assure you that once the cost and incentive studies are completed, we will begin such a review."

The House Government Operations Committee criticized the Budget Bureau's refusal to approve that questionnaire form, as follows (H. Rept., supra, pp 12-13):

The committee believes the foregoing reasons expressed by the Budget Bureau are largely unsound. It seems inconceivable that adequate studies can be developed concerning the costs of controlling industrial pollution, and concerning the incentives that will be necessary to enable industry to control and abate pollution from its waste discharges, *unless there is first obtained a clear and adequate inventory of the extent and scope of the industrial waste discharges which it is intended to control and abate.* This view of the committee is confirmed by the Interior Department's first report to Congress on the national requirements and costs of water pollution control, dated January 10, 1968, and entitled "The Cost of Clean Water." The Department * * * stated that it had great difficulty in developing estimates concerning the costs of industrial pollution control * * * due to "*the lack of current inventory of waste loadings from industrial sources, the wide range of industrial pollutants and pollutant sources, and the scarcity of data on existing treatment facilities, unmet needs, and industrial treatment costs*" (vol. I, p. 7). (Italic supplied.)

"The Department's report added (p. 8):

> " 'The unavoidable uncertainties in the estimates emphasize the necessity for continuing to seek more accurate inventory data on all sources of wastes.'

"*It is disgraceful that the national industrial wastes inventory proposed by the * * * subcommittee * * * has been delayed and obstructed for over 4 years. Such an inventory could, by now, have provided a very useful tool in the national effort to combat water pollution.*" (Italic supplied.)

All of the studies required by the Budget Bureau were completed and transmitted to Congress in March 1968.

After the committee's report was issued, the Budget Bureau's Deputy Director, in a letter of July 26, 1968, to the subcommittee, wrote as follows:

"The revised questionnaire will be reviewed by an ad hoc task force on water use data of the Water Resources Council on July 30, 1968. It will also be reviewed by an industry advisory group of the Bureau's Advisory Council on Federal Reports on August 13, 1968. *Once this latter review has taken place, it should be possible to take expeditious action on the industrial waste questionnaire.*" (Italic supplied.)

This promise was echoed by then Secretary of the Interior Udall, in his letter of July 31, 1968, to the subcommittee, that he "anticipated that expeditious clearance of the form will be forthcoming after" these two meetings. During 1969, this subcommittee wrote to you several times (February 28, April 22, and July 30, 1969) and to the Commissioner of the then Federal Water Pollution Control Administration (February 28, 1969), asking about the status of the inventory. Assistant Secretary Klein's response of July 30, 1969, stated that, after meeting with the Budget Bureau, only one issue remained—whether and the extent to which the data submitted via the questionnaire would be considered confidential—and stated that "within the next several weeks" Interior would determine "the degree of confidentiality that we wish to allow" and then request Budget Bureau approval.

Having received no further word from the Department, we wrote to you on February 9 and March 23, 1970, again urging establishment of the industrial waste inventory.

B. *Interior Department's substitute program as outlined in your letter of May 7, 1970.*

Your response of May 7, 1970, to the suocommittee, proposes the following four methods whereby the Federal Water Quality Administration will attempt to get industrial waste data:

1. *From the States, in connection with applications for grants authorized under section 8 of the Federal Water Pollution Control Act to construct new municipal sewage treatment works, or upgrade or expand existing facilities.*

The Interior Department published on March 31, 1970 (35 F.R. 5346), as proposed rulemaking, regulations adding five new sections (601.32–601.36) to title 36 of the Code of Federal Regulations concerning such grants. The proposed new section 601.32 states that the Commissioner of FWQA shall not approve any such grant unless he determines that a proposed facility "*** is included in an effective basinwide program for pollution abatement." In making this determination, the Commissioner is authorized to require, apparently from the State in which the proposed new works will be located (although the proposed regulation is not clear on this point), the following types of information:

(*a*) a list of all significant waste discharges;

(*b*) the average daily volume of discharge produced by each waste discharger;

(*c*) the major characteristics of each such waste discharge together with a measurement of their relative strength or concentrations;

(*d*) a description of treatment employed and degree of treatment currently achieved;

(*e*) a description of the effect of the discharges and abatement practices upon water quality in a basin and the anticipated effectiveness of the treatment works on improving water quality; and

(*f*) an identification of all waste discharges for which present treatment is inadequate.

However, the proposed regulation does not require the Commissioner to ask for such information in any instance.

If the Commissioner requires this information in all instances, and if the States have it and are authorized to make it available, to FWQA for its program use, it could be very useful where new treatment works are proposed or existing works are proposed to be upgraded or expanded. The proposed regulation will not, however, provide such information where no such proposal is made. Further, there will be numerous municipalities which will not make such proposals for several years.

We would appreciate your promptly providing to us a legal opinion from the Department's Solicitor concerning the following two questions:

(*a*) the statutory basis under which the Department may require, in light of the legislative history of the Clean Water Restoration Act of 1966, that, before a Federal grant to construct municipal treatment works can be made, the above information must be supplied to FWQA; and

(*b*) whether 44 U.S.C. sec. 3511, which prohibits an agency from denying a right, privilege, priority, or allotment to a person who fails to provide information in certain cases, would render ineffective this proposed method of obtaining information on industrial waste discharges, if a State or municipality refuses or fails to provide it when applying for a construction grant.

2. *From individual owners of industrial plants seeking to qualify under section 704 of the Tax Reform Act of 1969 (Public Law 91–172; 83 Stat. 667) for an accelerated 5-year amortization of any identifiable water pollution treatment facility.*

The act applies only to any such facility constructed or acquired after December 31, 1968, and before January 1, 1974, and "used, in connection with a plant or other property in operation before January 1, 1969." The facility qualifies for accelerated amortization only if the Interior Department certifies that it complies "with regulations of applicable Federal agencies," and that it is "in furtherance of the general policy" of the Federal Water Pollution Control Act.

We would appreciate your providing to us promptly the citation and three copies of the regulations of FWQA which are applicable to these facilities under this statute.

3. *From information obtained by the Corps of Engineers under its revised regulations (ER 1145–2–203 of April 23, 1970) governing new applications for corps permits for outfall sewers.*

The corps recently adopted these regulations as recommended by the House Committee on Government Operations in its report (H. Rept. 91–917, March 18, 1970) entitled: "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution." But these regulations will not provide information concerning discharges from such sewers already under corps' permit.

4. *By collecting within 3 months available in-house industrial waste information on a pilot scale for one river basin in each region of the Federal Water Quality Administration.*

Your letter states that the information thus collected will be used to develop "the means for obtaining a total industrial inventory." But, in essence, it appears to reject the committee's recommendation that an effective industrial waste inventory be established through questionnaires sent to, and voluntarily answered by, industry concerning the source, volume, composition, and points of discharge of its waste waters. Although your letter states that the industrial waste inventory questionnaire "form will be resubmitted to the Bureau of the Budget without the confidentiality clauses," it does not state when this will be done, or whether the Budget Bureau will approve it when it is submitted without this clause. Thus, your letter provides no assurance that such a voluntary inventory will ever be undertaken by the Interior Department, even after completion and subsequent analysis of FWQA's in-house pilot program.

C. Establishment of voluntary industrial waste inventory should not be delayed further.

The Interior Department's four methods outlined above for obtaining information concerning industrial waste discharges are good, as far as they go. They should be pursued. But they are not a substitute for a total industrial waste inventory to be obtained from each industrial discharger.

Such an inventory is a basic prerequisite to FWQA carrying out an effective water pollution control program in the near future. The immediate need for this inventory will not be diminished by the results obtained from the pilot study or any of the other methods outlined in your letter of May 7.

The Interior Department submitted a bill (S. 3472, pp. 21–22) last February to authorize it to require industry to provide to it waste waterr data in connection with its investigations under the water quality standards program. But that bill is not justification for delaying further the establishment of an inventory on the basis of voluntary cooperation by industry. Similar authority was requested by the Interior Department when the Clean Water Restoration Act was being considered by Congress in 1966, but it was not included in that act. As this committee said in its report of June 24, 1968, *supra* (p. 17):

"*The executive branch has not yet made a concerted and rigorous effort to get information by voluntary means. For compiling the industrial waste inventory, voluntary methods ought to be given a fair trial. We believe they will be completely adequate for a large majority of industries.* Industry is rapidly becoming aware of its responsibilities to help control and abate pollution caused by its waste discharges. The committee believes that industry will generally cooperate with Federal, State, and local governments in their efforts to develop the information needed to attain their common objectives.

"The committee believes that the common objective of controlling and abating water pollution will be better achieved by fostering mutual cooperation between industry and government. We have doubts only about a small minority of industries, who nevertheless may be contributing a significant load of pollution to our Nation's waters. If voluntary methods fail in such cases, the committee will have to reexamine proposals to broaden FWPCA's authority to obtain needed information." (Italic supplied.)

Indeed, we believe the Interior Department's legislation request to Congress of last February for authority to compel disclosure of industrial waste data would be more credible if the Department had tried a voluntary system and failed to obtain industry cooperation.

The executive branch's continued delay for 7 years, and now its apparent rejection of the committee's longstanding recommendation for the establishment of a national industrial waste inventory on the basis of voluntary cooperation by industry, is indefensible.

We therefore urge—

(1) that the Interior Department immediately request the Budget Bureau to approve the questionnaire form, without confidentiality restrictions except where the informant demonstrates to the Interior Department's satisfaction that public release of all or part of the information voluntarily supplied on the form would divulge trade secrets or secret processes, and

(2) that the Interior Department immediately establish an industrial waste water inventory on a voluntary basis.

At the same time we want to advise you that if the Budget Bureau does not approve the form, and if the Interior Department does not establish this inventory, before mid-August 1970, this subcommittee will hold hearings beginning on August 17, 1970, to go into this matter in greater detail. At such hearings, we would appreciate your testifying before the subcommittee on that date, and also make available to us on that date Mr. David D. Dominick, Commissioner of FWQA, and a representative of the Solicitor's Office who is familiar with legal problems associated with the "confidentiality clause."

Sincerely,

Henry S. Reuss,
Chairman,
Conservation and Natural Resources Subcommittee.
Guy Vander Jact,
Ranking Minority Member,
Conservation and Natural Resources Subcommittee.

House of Representatives,
Conservation and Natural Resources Subcommittee,
Committee on Government Operations,
Washington, D.C., May 28, 1970.

Hon. Robert P. Mayo,
Director, Bureau of the Budget,
Executive Office Building,
Washington, D.C.

Dear Mr. Mayo: Enclosed for your information is a copy of a letter we have today sent to Secretary Hickel concerning the establishment of a national industrial waste water inventory.

For nearly 7 years, this subcommittee, its predecessor subcommittee, and the Committee on Government Operations have urged that the executive branch establish a national industrial waste water inventory in cooperation with industry. A questionnaire form for that purpose was first submitted in 1964 by the Public Health Service to the Budget Bureau for approval as required by the Federal Reports Act of 1942 (as codified in Public Law 90–620, 44 U.S. Code, supp. IV, 3501–3511). Because of industry opposition, the Budget Bureau refused to approve the form. It was resubmitted on April 21, 1967, by the Interior Department with revisions designed to overcome industry objections.

On August 4, 1967, the Bureau's Deputy Director, responding to the subcommittee's request as to the status of the questionnaire form, stated that the Bureau would not begin its review of the questionnaire form until after the Interior Department had completed two studies required under the Clean Water Restoration Act of 1966; namely, (1) a comprehensive study of the cost of controlling pollution, including industrial pollution, and (2) a study of possible economic incentives for industry to abate pollution. The letter stated:

"We believe that once data is available from the cost and incentive studies, we will have a much better idea about what types of data are available from industry and how best to structure any potential questionnaire for the industrial inventory. *I can assure you that once the cost and incentive studies are completed, we will begin such a review.*" (Italic supplied.)

These studies were completed and transmitted by the Interior Department on March 7, 1968, to the Congress.

Subsequently, this committee in its report (H. Rept. 90–1579, June 24, 1968) entitled: "The Critical Need for a National Inventory of Industrial Wastes (Water Pollution Control and Abatement)" recommended that (p. 3):

"The Budget Bureau—which 4 years ago withheld approval of a proposed questionnaire form designed by the Interior Department to compile a national industrial wastes inventory—should promptly review, revise if necessary, and approve, the amended questionnaire form submitted by the Interior Department for such an inventory, and thus eliminate a critical loophole in the national program of water pollution control and abatement."

By letter dated July 26, 1968, the Bureau's Deputy Director advised us as follows:

"The revised questionnaire will be reviewed by an ad hoc task force on water use data of the Water Resources Council on July 30, 1968. It will also be reviewed by an industry advisory group of the Bureau's Advisory Council on Federal Reports on August 13, 1968. *Once this latter review has taken place, it should be possible to take expeditious action on the industrial wastes questionnaire.*" (Italic supplied.)

Having heard no further word from your Bureau or the Interior Department after that letter, the subcommittee sent letters to the Interior Department on

February 28, April 22, and July 30, 1969, asking about the status of the inventory. Assistance Secretary of the Interior Klein, in his response of July 30, 1969, advised us that meetings were held with the Budget Bureau, at which the "only point of contention" was whether and the extent to which data submitted via the questionnaire would be considered confidential. He also stated that "within the next several weeks" the Department would determine "the degree of confidentiality that we wish to allow" and then request Budget Bureau approval.

After further letters earlier this year to the Interior Department from the subcommittee concerning the status of the inventory, Secretary Hickel in a letter of May 7, 1970, advised us that "*the Bureau of the Budget suspended action on approval of the form.*" (Italic supplied.)

Secretary Hickel's letter also indicates that the committee's longstanding recommendation for establishment of a national waste water inventory is being rejected. We believe such rejection is not in the public interest. Until such an inventory is established, it will be impossible for the Interior Department to carry out an effective water pollution control program and to estimate with any reasonable accuracy the total cost of this program.

Further, on February 10, 1970, the Interior Department proposed a bill (S. 3471, pp. 21–22) which would amend the Federal Water Pollution Control Act to authorize that Department to require waste water data from industry in connection with its investigations under the water quality standards program. A similar proposal was made by the Department in connection with the Clean Water Restoration Act of 1966, but it was not included in that act by Congress.

This committee's June 1968 report observed that the "executive branch has not yet made a concerted and vigorous effort to get information" on waste water discharges by industry "by voluntary means" (H. Rept. 1579, supra, p. 12). This observation is true even today. The fact that the Federal Water Quality Administration does not have authority to compel industry to disclose its waste discharge data does not justify a rejection of the committee's recommendations (1) that Interior establish an inventory on the basis of voluntary cooperation by industry, and (2) that the Budget Bureau approve a questionnaire form for this purpose. Indeed, the Interior Department's present request for authority to compel disclosure would be more credible if the Department had tried a voluntary system and failed to obtain industry cooperation.

We therefore urge that the Budget Bureau promptly approve the Department's questionnaire form, without confidentiality restrictions except where the informant demonstrates to the Department's satisfaction that public release of all or part of the information voluntarily supplied on the form would divulge trade secrets or secret processes.

At the same time we want to advise you that if the Bureau does not approve the form, and if the Interior Department does not establish this inventory, before mid-August 1970, this subcommittee will hold hearings beginning on August 17, 1970, to go into this matter in greater detail. At such hearings, we would appreciate your testifying before the subcommittee on that date.

In the meantime, we would appreciate the Bureau providing to us the following information:

1. State the reasons for the Budget Bureau's notation, on February 5, 1970, on the Bureau's standard form No. 83 submitted by the Interior Department to the Bureau on April 21, 1967, suspending action on the questionnaire form.

2. (a) A chronological list of all meetings held concerning the questionnaire form since April 21, 1967, in which representatives of the Bureau participated.

(b) The names of all persons who attended each such meeting, and their affiliation.

(c) Three copies of the minutes, transcript, or summary report of each of those meetings.

3. Please cite, quote, and discuss the precise provision of law which authorizes the Budget Bureau to insist that an agency which desires to collect information on a voluntary, nonconfidential basis must nevertheless insert in the questionnaire a confidentiality clause which will restrict the agency's use of such information.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
GUY VANDER JAGT,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

11. LETTER OF JUNE 30, 1970, FROM DEPUTY BUDGET BUREAU DIRECTOR PAUL F. KRUEGER TO SUBCOMMITTEE, ADVISING THAT (A) FWQA HAD "DECIDED TO SEE HOW MUCH OF THE NEEDED DATA COULD BE OBTAINED FROM THE STATES," AND (B) BUREAU OF THE BUDGET HAD "SUSPENDED CONSIDERATION OF" QUESTIONNAIRE FORM

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 30, 1970.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to provide the information which you requested in your letter of May 28 and which Mr. Julius Shiskin, Assistant Director for Statistical Policy, promised in his acknowledgement of June 4.

Your first question asks the reasons for the Budget Bureau's February 5, 1970, notive of suspension of action on the proposal to collect data on waste water discharges by industry. This was simply a formal notification given the agency that this Office was not actively reviewing the proposed survey and that responsibility for initiating further consideration of it rested with the agency. Events leading to this notice are described below.

After the Advisory Council panel meeting in August 1968, agreement was reached with the Federal Water Pollution Control Administration (now the Federal Water Quality Administration) on all matters pertaining to the survey except a pledge of confidentiality. It was our judgment, based on considerable experience, that such a pledge was necessary if useful data were to be obtained on a voluntary basis. FWPCA indicated to us that they were exploring the issue and would make a recommendation in the near future. No further proposals came from FWPCA. Part of the delay, we understand, resulted from a change in the head of the agency. In February 1970 when we inquired about what action FWPCA was planning to take, we were informed that they had decided to see how much of the needed data could be obtained from the States. It was then that we suspended consideration of the survey until further word from FWPCA. A request from the agency can reopen the matter at any time, and we are prepared to give it prompt consideration.

Second, you ask for a list of meetings held concerning the questionnaire since April 21, 1967, in which Bureau representatives participated, together with the names and affiliations of those attending and copies of the minutes. Only the two meetings mentioned in the July 26, 1968, letter from Deputy Director Hughes were held after that date.

1. An ad hoc task force of staff representatives of interested Government agencies met at the offices of the Water Resources Council on July 30, 1968. People attending this meeting—a list is enclosed—took such notes as they considered necessary for their purpose, but no minutes were prepared.

2. An advisory council panel of industry and Government representatives met at the Budget Bureau on August 13, 1968. Three copies of the minutes, containing the names and affiliation of persons attending, are enclosed. You may note that this record shows attendance by Jodie Scheiber, House Natural Resources and Power Subcommittee, as alternate for the Chief Counsel who had been invited.

With regard to your third question, there is no provision of law which specifically authorizes the Budget Bureau to insist that an agency, "which desires to collect information on a voluntary, nonconfidential basis," must use a confidentiality clause on a questionnaire. The action was taken under authority given the Director of the Bureau of the Budget by sections 5 and 6 of the Federal Reports Act of 1942. In administering that act, we apply certain criteria which must be met before a form is approved. Among these is feasibility of the collection plan. We are concerned with the pledge of confidentiality of individual returns if such a pledge is important in obtaining adequate responses. This was the situation in the survey to obtain information on waste water discharges. The Federal Water Quality Administration has no authority to require that respondents furnish information, but must depend upon their voluntary cooperation. We understand the data were not to be used for enforcement or regulatory purposes which might require public disclosure of individual reports. Under these circumstances, we consider it particularly important to pledge confidentiality so as to remove the deterrent to respondents reporting fully information which might otherwise be detrimental to their interests. Without such a pledge the results of the survey would most likely be of little value.

We hope this has been responsive to the questions you have raised. We shall be glad to supply any further information you may desire.

Sincerely,

PAUL F. KRUEGER,
Deputy Director, Office of Statistical Policy.

Enclosures.

The following persons attended the interagency task force meeting on July 30, 1968:

Name	*Affiliation*
Bruce Blanchard	Water Resources Council.
J. H. McDermott	Federal Water Pollution Control Administration, Department of the Interior.
J. L. Lewis	Do.
D. Earl Jones, Jr	Federal Housing Administration, Department of Housing and Urban Development.
Carl D. Fetzer	Soil Conservation Service, U.S. Department of Agriculture.
Sam R. Hoover	Agricultural Research Service, U.S. Department of Agriculture.
Charles F. Lamborn	Soil Conservation Service, U.S. Department of Agriculture.
Frank A. Bell, Jr	Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare.
W. A. Smith	Office of Management Research, Department of the Interior.
Alvin Pendleton	Geological Survey, Department of the Interior.
John W. Murray	Bureau of Power, Federal Power Commission.
Louis J. Owen	Industry Division, Bureau of the Census.
William R. Gray	Do.
K. L. Kollar	Business and Defense Services Administration, Department of Commerce.
Harold Lingard	Office of Statistical Policy, Bureau of the Budget.

[NOTE.—The minutes referred to on p. 70 are reprinted on pp. 100-102.]

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12. LETTER OF JULY 23, 1970, FROM SUBCOMMITTEE TO SECRETARY HICKEL, REQUESTING INTERIOR DEPARTMENT COMMENTS ON BOB LETTER OF JUNE 30

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 23, 1970.

Hon. WALTER J. HICKEL,
Secretary of the Interior, Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Our subcommittee has been corresponding with you concerning the establishment of a national inventory of industrial wastes. You will recall that in your letter of May 7, 1970, you stated that the questionnaire form proposed by the Federal Water Quality Administration, on which the Budget Bureau had suspended action, "will be resubmitted to the Bureau of the Budget" by the Interior Department, but without "the confidentiality clauses" which the Budget Bureau had previously required.

Our subcommittee's letter of May 28, 1970, to you pointed out that the "continued delay for 7 years" in adopting the long-standing recommendation of the House Committee on Government Operations to establish such an inventory "is indefensible." We therefore urged that your Department "immediately request the Budget Bureau to approve the questionnaire form needed to establish the inventory." Simultaneously, we wrote to the Director of the Budget Bureau, urging that it "promptly approve" your Department's questionnaire form.

Enclosed is a copy of the reply dated June 30 we received from Deputy Director Krueger of the Budget Bureau (now the Office of Management and Budget), which states:

"In February 1970 when we inquired about what action FWPCA was planning to take, we were informed that they had decided to see how much of the needed data could be obtained from the States. It was then that we suspended consideration of the survey until further word from FWPCA. A request from the agency can reopen the matter at any time, and we are prepared to give it prompt consideration."

1. In view of OMB's willingness to "reopen the matter" and "give it prompt consideration," we hope that you have now resubmitted the proposed form to that office. We would appreciate your informing us when that was done.

Deputy Director Krueger's letter also said:

"There is no provision of law which specifically authorizes the Budget Bureau to insist that an agency, "which desires to collect information on a voluntary, nonconfidential basis, 'must use a confidentiality clause on a questionnaire."

2. In view of OMB's lack of authority to insist upon the use of a confidentiality clause, will your Department request OMB to approve the questionnaire form without this clause?

3. (*a*) Has your Department assured OMB or any other organization or individual that the data obtained will not be used for "enforcement or regulatory purposes?

(*b*) If "Yes," please provide to us copies of any letters, memorandums, et cetera, in which such assurances were given.

In view of the possible hearing by this subcommittee concerning the establishment of this inventory, as mentioned in our letter of May 28, we would appreciate your early response.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

[NOTE.—Commissioner Dominick's letter of September 28, 1970, responding to the above letter and to that of May 28, 1970 (see pp. 64–68 of this appendix), appears on p. 11, of the hearing record.]

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13. SUBCOMMITTEE LETTERS TO INTERIOR DEPARTMENT DATED SEPTEMBER 18, 1970, RE CONFIDENTIALITY CLAUSE, AND OCTOBER 15, 1970, URGING IMMEDIATE IMPLEMENTATION OF INVENTORY; AND FWQA REPLIES OF OCTOBER 26, 1970

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 18, 1970.

Hon. FRED RUSSELL,
Under Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. RUSSELL: We again commend you and Commissioner Dominick for agreeing that within the next month the Federal Water Quality Administration will initiate, pursuant to this subcommittee's recommendation, the long-delayed national industrial wastes inventory on an annual basis.

We believe that the data obtained from this inventory will provide a significant and important advance in controlling and preventing the further degradation of the Nation's waterways. It will, for example, help the Corps of Engineers to accelerate its new and progressive program of requiring that industrial waste dischargers who are polluting our waterways must apply for and obtain permits from the corps under the Refuse Act and certificates from the States under section 21(b) of the Federal Water Pollution Control Act that water quality standards will be complied with.

We have carefully reviewed the language concerning confidentiality which FWQA, at our hearing yesterday, proposed to attach to the questionnaire form FWQA–120 (Rev. 4–70), in the light of the testimony by you, Commissioner David D. Dominick and Deputy Solicitor Raymond C. Coulter. By such testimony, we were assured that the following data obtained by the inventory would be made available to other Federal agencies, including the Corps of Engineers, to State and local water pollution control agencies, and to the public: (a) name and address of the waste discharger, (b) waterway and point of discharge, (c) quality of the discharge, (d) composition of the discharge, and (e) frequency and quantity of the discharge.

Our review of the proposed confidentiality language reinforces the belief expressed at the hearing that the language does not carry out your assurances to us. Section 4(b) of the Federal Reports Act (now codified in 44 U.S.C. Supp. V, 3508(b)) authorizes release of the data "to another Federal agency *only* * * * if the information as supplied by persons to a Federal agency *had not*, at the time of collection, been declared by that agency or by a superior authority to be *confidential*. . ." (Italics supplied) paragraph II of the FWQA language declares that the information "submitted * * * in response to this survey will be considered confidential within the meaning of 18 U.S.C. 1905 . . . with the exceptions noted in paragraph III." Those exceptions relate only to FWQA's use of that data. The provision permitting making the data available to other Federal agencies and to State and local water pollution control agencies is in paragraph IV, and is not one of the "exceptions noted in paragraph III." Moreover, paragraph IV also states that, to get the data, "such agencies or officials [must] agree that the information will not be disclosed except as authorized by appropriate Federal, State, or local law." The reference to such "law" creates ambiguities as to what law controls and what is its relationship to 18 U.S.C. 1905 which is invoked in Paragraph II. Furthermore, no express provision is made for disclosing the data to the public or Members of Congress or this subcommittee.

Enclosed is a copy of alternative language which will adequately carry out the understanding of this subcommittee concerning the assurances given to us yesterday. We suggest that this language be inserted in part A–1, of the "Instructions for Completing Report of Industrial Waste Water Disposal" (Form FWQA 120–1).

We understand that the subcommittee's staff will meet with Commissioner Dominick and his staff on September 21, 1970, to discuss the confidentiality language and assist FWQA in getting the inventory under way promptly.

Our suggested language affirmatively recited FWQA's statutory authority to collect and disseminate the data provided on the form to anyone. Since 18 U.S.C. 1905 prohibits only unauthorized disclosure of data by Federal officials or employees, there is no need to invoke it here, as FWQA is authorized to disseminate the data.

In order to prevent the disclosure of trade secrets—although we doubt that this problem will arise in connection with a questionnaire that is concerned only with what wastes are actually being discharged into a waterway—our suggested language provides that if the person supplying the information clearly shows to the satisfaction of FWQA that disclosure of the data to the public would divulge trade secrets or secret processes, then FWQA would treat it as confidential and limits its use.

When FWQA embarks on the first phase of the inventory please provide to us a list of those to whom the questionnaire form is sent.

Sincerely,

HENRY S. REUSS, *Chairman.*

ALTERNATIVE LANGUAGE SUGGESTED BY SUBCOMMITTEE

The Federal Water Pollution Control Act authorizes the Federal Water Quality Administration (FWQA) to conduct investigations and studies relating to the causes, control, and prevention of water pollution and to collect and make available the results of, and other information concerning, such investigations and studies. The data provided in this report will be used by FWQA to carry out the programs authorized by that act, and will be made available to other Federal agencies and to State, interstate, and local water pollution control agencies and to the public as authorized by that act. If any person completing this report clearly shows that disclosure of any portion of the data therein to anyone other than to a Federal agency for use by that agency, would divulge such person's trade secrets or secret processes, FWQA will treat such portion as confidential and not so disclose it.

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., October 26, 1970.

Hon. HENRY S. REUSS,
House of Representatives,
Washington, D.C.

DEAR MR. REUSS: As indicated in your September 18 letter to Under Secretary Russell the language concerning confidentiality, proposed to attach to the questionaire for the national industrial wastes inventory, has undergone substantial revision.

Pursuant to our discussions with your committee staff, the following language has been adopted:

"Information supplied by individual responses to this inquiry will be used by the Federal Water Quality Administration to carry out programs authorized by the Federal Water Pollution Control Act and will be made available to other Federal agencies and to State, interstate, and local water pollution control agencies and to the public as authorized by that act."

We will be in touch as the preparations for the inventory progress.

Sincerely yours,

David D. Dominick, *Commissioner.*

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., October 15, 1970.

Mr. David D. Dominick,
Commissioner, Federal Water Quality Administration,
Arlington, Va.

Dear Mr. Dominick: Nearly a month has passed since you testified on September 17, 1970, before our subcommittee and assured us that the Federal Water Quality Administration would institute a national industrial wastes inventory within a month. On several occasions since then the subcommittee's staff has inquired about the status of the inventory and received assurances from FWQA that the questionnaire would soon be mailed to industry. But the inventory still has not been instituted.

Moreover, we have not received a reply to our letter of September 18, 1970, concerning a revision in FWQA's proposed confidentiality clause to be included in the questionnaire form.

We also understand that Mr. Walter A. Hamilton, executive director of the national industrial pollution control council, has raised some questions on behalf of the council about the applicability of 18 U.S.C. 1001 to the responses made by industry on the questionnaire and that he intends to discuss the questionnaire with members of the council at its closed meeting of October 14, 1970. We hope that you will not allow another industry group to further delay the inventory, particularly when there is no doubt that 18 U.S.C. 1001 will apply to the responses.

We request that you begin mailing the questionnaire to industry before October 20, 1970, and provide to use a list of those receiving the questionnaire as we requested on September 18.

Also please provide to us your timetable for submitting the questionnaire to all of industry whether or not a sufficient number of replies are received from the initial mailing to 250 industrial plants.

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. Department of the Interior,
Federal Water Pollution Control Administration,
Washington, D.C., October 26, 1970.

Hon. Henry Reuss,
Chairman, Subcommittee on Conservation and Natural Resources, Committee on Government Operations, House of Representatives, Washington, D.C.

Dear Mr. Chairman: We have received your letter of October 15, 1970, and herewith forward to you all the information you have requested:

(1) A copy of the questionnaire (including the statement of use of information provided) being used in the initial mailing;

[Note.—The mailing list referred to above is in the subcommittee files.]

(2) The list of those plants receiving the questionnaire in the initial mailing;

(3) The projected plans for completion of the industrial waste inventory.

We trust you have received our letter of October 19, regarding the confidentiality statement. As we have previously indicated, we will be in contact with you as the inventory progresses.

Sincerely yours,

David D. Dominick, *Commissioner.*

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., October 21, 1970.

DEAR SIR: President Nixon has set forth a far-reaching and comprehensive program for improving the quality of our environment. As a part of this program, the Federal Water Quality Administration is undertaking a national inventory of industrial waste water discharges. Your plant is included in the first increment to be surveyed.

Acquisition of the data requested on the enclosed form is critical to the support of our activities for insuring the continued and improved qualty of our Nation's water resources. The data are to be used for a variety of activities including river basin planning, water quality standards, and research and development, to mention a few. Future decisions concerning pollution abatement programs may well be based on data obtained from this inventory. We are soliciting these data on a vountary basis; the soundness of our decisions is dependent on the quality and quantity of data received. In this connection, should you wish to give more detail on your pollution control and abatement efforts, past and planned, please do so. Additional sheets may be used as necessary if the space under item 13, "Remarks" is insufficient.

If you have furnished any of the requested information to another Federal or State agency within the past 6 months, a copy of such reports may be submitted in lieu of completing the corresponding parts of the form.

Since the form is new, and you are among the first to be surveyed, we would appreciate your cooperation in noting any data items for which the request is not clear. Complete such items, if you would, however, to the best of your understanding.

The questionnaire is furnished in quadruplicate, with three groupings of page 2 to allow for reporting of separate discharges. Should you require additional forms or have any questions please write:

Federal Water Quality Administration,
Office of Operations,
Division of Technical Support,
Washington, D.C. 20242

or call: Mr. J. L. Lewis—Area Code (703) 557-7637

Because the need for these data is so urgent, I am requesting that you complete and return the original and two copies of the form in the enclosed self-addressed envelope within 30 days after receipt.

I have also enclosed a copy of a letter I sent to your parent corporation. Again, I urge your participation and cooperation in this most important project.

Sincerely yours,

DAVID D. DOMINICK, *Commissioner.*

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., October 19, 1970.

DEAR MR. ——————: I am making this personal approach to you and other industrial leaders to request your support and assistance in conducting a national inventory of industrial wastewater discharges. This is a vital part of one of our programs through which we plan to eventually identify all municipal, industrial, agricultural, thermal and other wastewater discharges that may affect our supply of clean water.

A municipal inventory has already been completed and is being updated. A survey of thermal discharges from electric generating plants is being initiated by the Federal Power Commission in cooperation with us. Our current effort, as indicated above, is in the industrial wastes area. We expect to initiate the survey within the next 10 days with the mailing of questionnaires to the first increment of the approximate 10,000 plants we propose to survey in the next 6 to 8 months. This mailing involves facilities of interest to you as identified in enclosure 1.

To familiarize you with the scope of the survey, I am sending you a copy of the questionnaire with instructions for completion (enclosure 2). The data requested are vital to our programs, including river basin planning, in which your plants must necessarily be considered, and our long-range research and development effort.

Response to the questionnaire is voluntary. With the knowledge that the data furnished will significantly affect the future direction and effectiveness of our programs, I am requesting you to authorize and encourage officials of your plants to complete the forms in as much detail as possible.

It has been most gratifying to me to observe the increasing emphasis and effort being placed by industry on control of water pollution. We can act together to eliminate water pollution, and I hope that through this inventory we can attain this closer working relationship.

Sincerely yours,

DAVID D. DOMINICK, *Commissioner.*

OPERATION PLAN—FWQA NATIONAL INDUSTRIAL WASTE INVENTORY

INTRODUCTION

The industrial waste inventory will be conducted as a two-phase operation followed by a continuous program of maintenance and updating of the total record. Phase I will be a pilot survey of 250 randomly selected plants with response by industry to mailed questionnaires to be voluntary. Phase II will embrace the principal collection effort necessary to establish the base inventory with priority given to coverage of an estimated 10,000 * plants which use more than 20 million gallons of water per year and account for about 90 percent of the total water used by industry.

PHASE I

1. Purpose

The objective of the pilot survey is to assess the quantity and quality of response by industry to this type of survey. The results will be examined to determine: (1) if the form or instructions need revision; and (2) the basis for mailing and/or other procedural changes desired to insure the success of phase II.

2. Execution of phase I

A. Selection of industries

The 250 industrial plants to be surveyed in phase I were selected by a combination of random samplings (190 plants) and specific selection to insure coverage of industries in areas of special interest (60 plants). They were selected from a list compiled by FWQA of more than 6,500 plants which are considered essential to establishing a basic inventory record.

B. Mailing inventory forms

The inventory forms and instructions, together with a return self-addressed envelope, will be mailed from FWQA headquarters directly to the selected plants. A cover letter from the Commissioner will request that the completed form be returned within 30 days.

C. Followup for nonresponses

If no reply is received from a plant by our suspense date (35 days after mailing), another inventory form will be mailed together with the original and a new cover letter. If no response is received within 35 days after the followup, the industry will be indicated as a nonrespondent.

D. Processing of responses

The completed forms will be coded as soon after receipt as possible. The responses will then be entered into the computer.

E. Analysis of responses

The responses will be reviewed during processing for the following:

(1) The percentage of the responses containing entries for each of the data items, especially effluent data;

(2) the amount of effluent data furnished;

(3) indications that the data requests were misinterpreted or not clear to the respondent;

(4) quality and technical validity of data furnished.

Following completion of allotted response period the percentage of nonrespondents will be determined and the above items will be consolidated for the total number of respondents. Analysis of these will then be made as previously discussed in the objectives.

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*1963 Census of Manufacturers, Bureau of the Census, shows 8,925 plants in this category.

4. Schedule for phase I

	Weeks
Mailing	1
Response period (1)	5
Response period (2)	5
Analysis	2
Total	13

PHASE II

1. Purpose

The purpose of phase II is to establish the base inventory, to identify and exploit data sources other than our own FWQA programs, and to establish procedures for continuously updating the base.

2. Execution

A. Planning base

Certain aspects of phase II planning cannot be finalized until the results of phase I are analyzed; for example, it may be desirable to revise the report form, and modifications to collection procedures to attain greater effectiveness may become necessary. Basically, however, the data requested on the report form are those required for FWQA functions and the form in its present or revised version will be used regardless of collection procedures. The phase II plans are based on this premise and on the strong probability that the principal collection effort will be via direct mailing of the form to industry by FWQA. As previously stated, priority will be given to coverage of those industries using the largest amounts of water and the first effort will be so designed. Included, however, will be those plants which have been cited in enforcement actions or are included in the implementation plans of the States water quality standards.

B. Preliminary action

A listing of industrial plants classified within the following major water-using industries has been extracted from Dun & Bradstreet's directory:

	SIC Code
Food	20
Textiles	22
Paper	26
Chemicals	28
Petroleum	29
Primary metals	33
Transportation equipment	3, 711

The list, totaling approximately 86,000 plants, is arranged by SIC codes with individual plants under each code appearing in descending order of the number of employees. Selection of plants to be included in phase II will be spread in proportion to the percentage of the total number of plants of those under each code, and within codes in the order in which they appear on the list. The total number to be included will be determined after the response percentage of phase I has been determined.

Inasmuch as the form may be revised when phase I is completed, printing in quantity will be delayed. Numbers of forms desired will depend not only on phase I experience but also on a final decision as to whether the Corps of Engineers will use it as a part of the requirement on industry when submitting an application for a discharge permit. In the interest of saving the procurement lag time for the special paper (no carbon required) used in the form, it will be ordered on an educated guess as to quantity 30 days in advance of the completion of phase I.

C. Survey methods

At the start of phase I, a letter will be dispatched to State water pollution control agencies informing them of the survey and inviting their participation. Three alternate methods are proposed generally as follows: Plan A—Headquarters FWQA does all mailing, handling, and processing; plan B—same as plan A except States furnish us their forwarding letter to be sent to industry with the forms; and plan C—FWQA furnishes forms and address lists to States; they record data, and FWQA processes. The overall configuration of the survey will probably be a combination of the three plans.

Once the base inventory is established it is intended that maintenance and updating will be handled through FWQA regional offices. Sources of data to be utilized will include all FWQA programs, the Corps of Engineers, tax certification processes and other Federal and State agencies.

D. Scheduling

It is expected that phase I will be completed on or before January 31, 1971. During January, which is the followup portion of phase I, we should be able to determine the extent of revision, if any, desired in the form. Also, some indication of response percentage should be identifiable. Dependent on printing lag time, mailing of forms can be started in 30 to 60 days, that is, in March or April.

Appendix 3.—The Federal Water Quality Administration's Questionnaire on Industrial Waste Waters

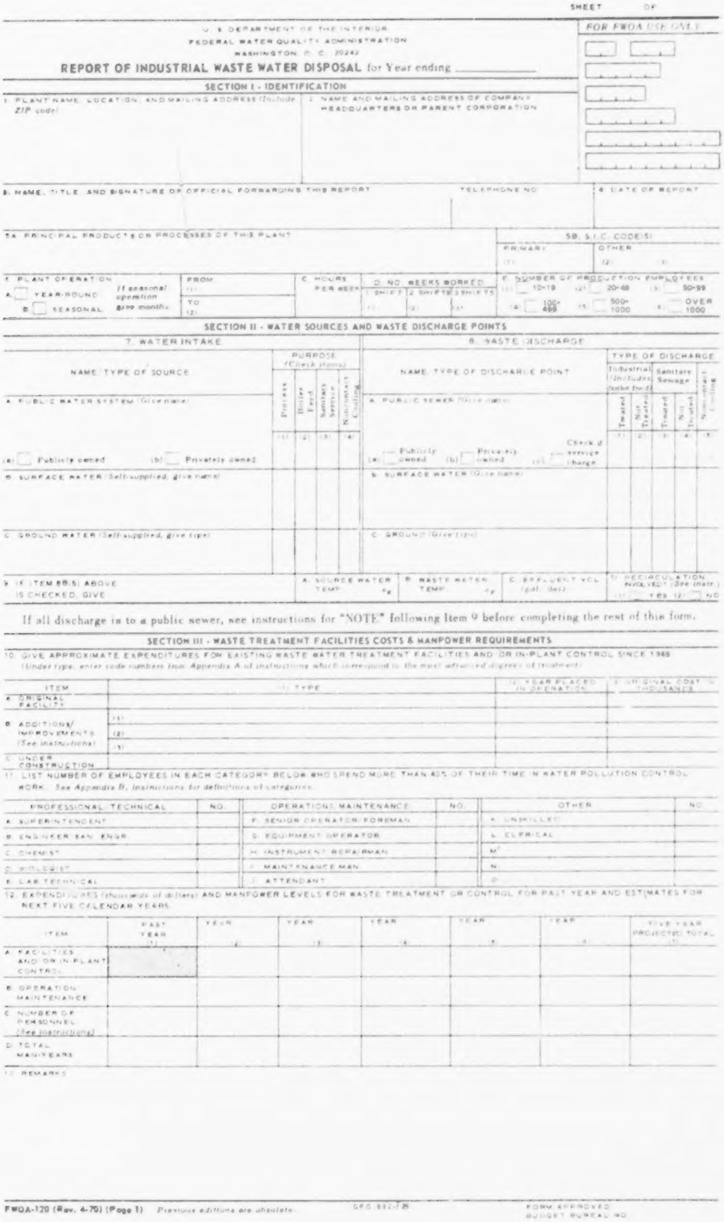
A. THE QUESTIONNAIRE FORM AND ACCOMPANYING INSTRUCTIONS

At the hearing on September 17, 1970, the Commissioner of the Federal Water Quality Administration presented the following questionnaire and instructions which he proposed to send to industrial dischargers. The questionnaire form that was subsequently sent to the initial group of 250 companies was exactly the same, except that blocks 29 and 30 of page 2 of the form (arsenic (As) and mercury (Hg)) were repositioned above block "g," and the following statement was placed at the bottom of both pages of the questionnaire:

NOTICE

Information supplied by individual responses to this inquiry will be used by the Federal Water Quality Administration to carry out programs authorized by the Federal Water Pollution Control Act and will be made available to other Federal agencies and to State, interstate, and local water pollution control agencies and to the public as authorized by that Act.

(OMB No. 42-R1602—APPROVAL EXPIRES JANUARY 31, 1971.)



SHEET ____ OF ____

U. S. DEPARTMENT OF THE INTERIOR
FEDERAL WATER QUALITY ADMINISTRATION
WASHINGTON, D. C. 20242

FOR FWQA USE ONLY

REPORT OF INDUSTRIAL WASTE WATER DISPOSAL for Year ending ____________

SECTION I - IDENTIFICATION

1. PLANT NAME, LOCATION, AND MAILING ADDRESS *(Include ZIP code)*

2. NAME AND MAILING ADDRESS OF COMPANY HEADQUARTERS OR PARENT CORPORATION

3. NAME, TITLE, AND SIGNATURE OF OFFICIAL FORWARDING THIS REPORT

TELEPHONE NO.

4. DATE OF REPORT

5A. PRINCIPAL PRODUCTS OR PROCESSES OF THIS PLANT

5B. S.I.C. CODE(S)

PRIMARY (1)

OTHER (2) (3)

6. PLANT OPERATION
A. ☐ YEAR-ROUND
B. ☐ SEASONAL
If seasonal operation give months
FROM (1)
TO (2)

C. HOURS PER WEEK

D. NO. WEEKS WORKED
1 SHIFT (1) | 2 SHIFTS (2) | 3 SHIFTS (3)

E. NUMBER OF PRODUCTION EMPLOYEES
(1) ☐ 10-19 (2) ☐ 20-49 (3) ☐ 50-99
(4) ☐ 100-499 (5) ☐ 500-1000 (6) ☐ OVER 1000

SECTION II - WATER SOURCES AND WASTE DISCHARGE POINTS

7. WATER INTAKE					8. WASTE DISCHARGE					
NAME/TYPE OF SOURCE	PURPOSE *(Check items)*				NAME/TYPE OF DISCHARGE POINT	TYPE OF DISCHARGE				
						Industrial *(Includes ...)*		Sanitary Sewage		Noncontact Cooling
	Process	Boiler Feed	Sanitary Service	Noncontact Cooling		Treated	Not Treated	Treated	Not Treated	
	(1)	(2)	(3)	(4)		(1)	(2)	(3)	(4)	(5)
A. PUBLIC WATER SYSTEM *(Give name)* (a) ☐ Publicly owned (b) ☐ Privately owned					A. PUBLIC SEWER *(Give name)* (a) ☐ Publicly owned (b) ☐ Privately owned (c) ☐ Check if service charge					
B. SURFACE WATER *(Self-supplied, give name)*					B. SURFACE WATER *(Give name)*					
C. GROUND WATER *(Self-supplied, give type)*					C. GROUND *(Give type)*					

9. IF ITEM 8B(5) ABOVE IS CHECKED, GIVE
A. SOURCE WATER TEMP. °F
B. WASTE WATER TEMP. °F
C. EFFLUENT VOL. *(gal./day)*
D. RECIRCULATION INVOLVED? *(See instr.)* (1) ☐ YES (2) ☐ NO

If all discharge is to a public sewer, see instructions for "NOTE" following Item 9 before completing the rest of this form.

SECTION III - WASTE TREATMENT FACILITIES COSTS & MANPOWER REQUIREMENTS

10. GIVE APPROXIMATE EXPENDITURES FOR EXISTING WASTE WATER TREATMENT FACILITIES AND/OR IN-PLANT CONTROL SINCE 1948
(Under type, enter code numbers from Appendix A of instructions which correspond to the most advanced degree of treatment)

ITEM	(1) TYPE	(2) YEAR PLACED IN OPERATION	(3) ORIGINAL COST (in thousands)
A. ORIGINAL FACILITY			
B. ADDITIONS/IMPROVEMENTS *(See instructions)*	(1)		
	(2)		
	(3)		
C. UNDER CONSTRUCTION			

11. LIST NUMBER OF EMPLOYEES IN EACH CATEGORY BELOW WHO SPEND MORE THAN 40% OF THEIR TIME IN WATER POLLUTION CONTROL WORK. *See Appendix B, instructions for definitions of categories.*

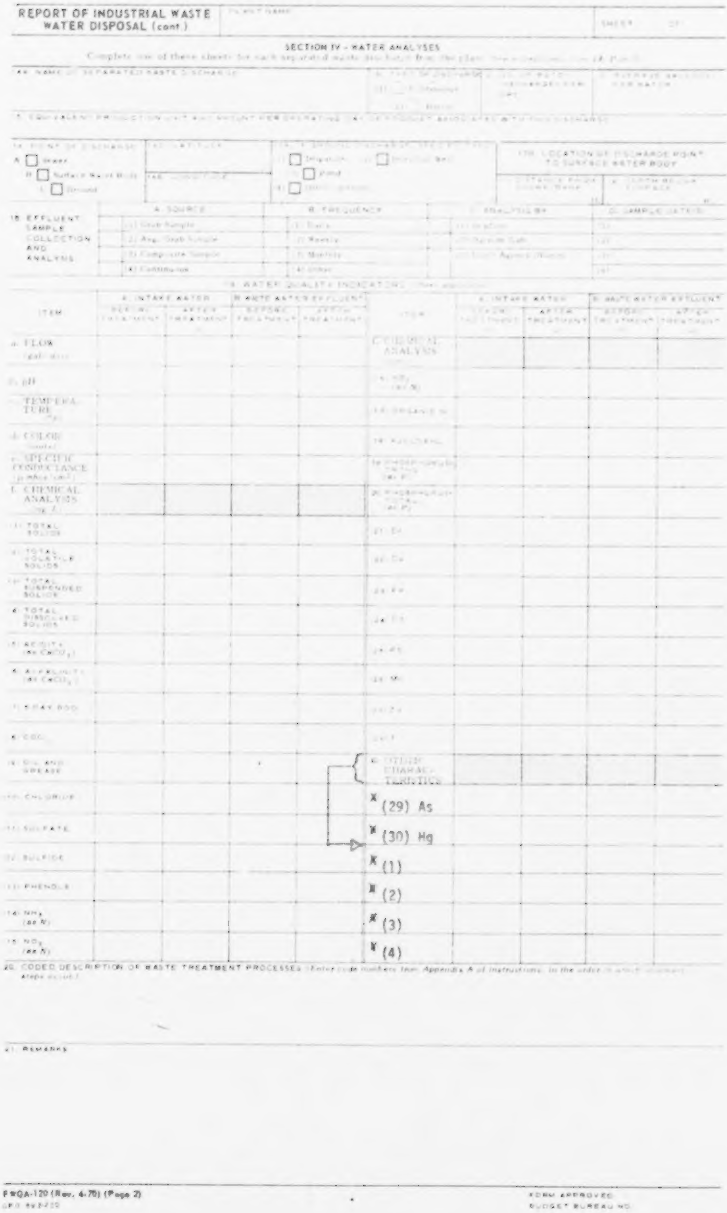
PROFESSIONAL/TECHNICAL	NO.	OPERATIONS/MAINTENANCE	NO.	OTHER	NO.
A. SUPERINTENDENT		F. SENIOR OPERATOR/FOREMAN		K. UNSKILLED	
B. ENGINEER/SAN. ENGR.		G. EQUIPMENT OPERATOR		L. CLERICAL	
C. CHEMIST		H. INSTRUMENT REPAIRMAN		M.	
D. BIOLOGIST		I. MAINTENANCE MAN		N.	
E. LAB TECHNICAL		J. ATTENDANT		O.	

12. EXPENDITURES *(thousands of dollars)* AND MANPOWER LEVELS FOR WASTE TREATMENT OR CONTROL FOR PAST YEAR AND ESTIMATES FOR NEXT FIVE CALENDAR YEARS

ITEM	PAST YEAR (1)	YEAR (2)	YEAR (3)	YEAR (4)	YEAR (5)	YEAR (6)	FIVE YEAR PROJECTED TOTAL (7)
A. FACILITIES AND/OR IN-PLANT CONTROL							
B. OPERATION/MAINTENANCE							
C. NUMBER OF PERSONNEL *(See instructions)*							
D. TOTAL MAN-YEARS							

13. REMARKS

FWQA-120 (Rev. 4-70) (Page 1) *Previous editions are obsolete.* GPO 832-728 FORM APPROVED BUDGET BUREAU NO.



REPORT OF INDUSTRIAL WASTE WATER DISPOSAL (cont.)

PLANT NAME

SHEET OF

SECTION IV - WATER ANALYSES

Complete one of these sheets for each separated waste discharge from the plant. See instructions, Item 14, Part II.

14A. NAME OF SEPARATED WASTE DISCHARGE

B. TYPE OF DISCHARGE (1) Continuous (2) Batch

C. NO. OF BATCH DISCHARGES PER DAY

D. AVERAGE VOLUME PER BATCH

15. EQUIVALENT PRODUCTION UNIT AND AMOUNT PER OPERATING DAY OF PRODUCT ASSOCIATED WITH THIS DISCHARGE

16. POINT OF DISCHARGE
A ☐ Sewer
B ☐ Surface Water Body
C ☐ Ground

16A. LATITUDE

16B. LONGITUDE

16C. IF GROUND DISCHARGE, SPECIFY BY:
(1) ☐ Injection Well (2) ☐ [illegible]
(3) ☐ Pond
(4) ☐ Other (specify)

17. LOCATION OF DISCHARGE POINT TO SURFACE WATER BODY
A. DISTANCE FROM SHORE BANK (ft.)
B. DEPTH BELOW SURFACE (ft.)

18. EFFLUENT SAMPLE COLLECTION AND ANALYSIS

A. SOURCE	B. FREQUENCY	C. ANALYSIS BY	D. SAMPLE DATE(S)
(1) Grab Sample	(1) Daily	(1) In-plant	(1)
(2) Avg. Grab Sample	(2) Weekly	(2) Outside Lab.	(2)
(3) Composite Sample	(3) Monthly	(3) Govt. Agency (Name)	(3)
(4) Continuous	(4) Other		(4)

19. WATER QUALITY INDICATORS (Check applicable)

ITEM	A. INTAKE WATER: BEFORE TREATMENT	A. INTAKE WATER: AFTER TREATMENT	B. WASTE WATER EFFLUENT: BEFORE TREATMENT	B. WASTE WATER EFFLUENT: AFTER TREATMENT	ITEM	A. INTAKE WATER: BEFORE TREATMENT	A. INTAKE WATER: AFTER TREATMENT	B. WASTE WATER EFFLUENT: BEFORE TREATMENT	B. WASTE WATER EFFLUENT: AFTER TREATMENT
a. FLOW (gal/day)					f. CHEMICAL ANALYSIS (cont.)				
b. pH					(16) NO₃ (as N)				
c. TEMPERATURE (°F)					(17) ORGANIC N				
d. COLOR (units)					(18) KJELDAHL				
e. SPECIFIC CONDUCTANCE (μ mhos/cm²)					(19) PHOSPHORUS ORTHO (as P)				
f. CHEMICAL ANALYSIS (mg/l)					(20) PHOSPHORUS TOTAL (as P)				
(1) TOTAL SOLIDS					(21) Cd				
(2) TOTAL VOLATILE SOLIDS					(22) Cr				
(3) TOTAL SUSPENDED SOLIDS					(23) Fe				
(4) TOTAL DISSOLVED SOLIDS					(24) [illegible]				
(5) ACIDITY (as CaCO₃)					(25) [illegible]				
(6) ALKALINITY (as CaCO₃)					(26) Mn				
(7) 5-DAY BOD					(27) Zn				
(8) COD					(28) [illegible]				
(9) OIL AND GREASE					g. OTHER CHARACTERISTICS				
(10) CHLORIDE					* (29) As				
(11) SULFATE					* (30) Hg				
(12) SULFIDE					* (1)				
(13) PHENOLS					* (2)				
(14) NH₃ (as N)					* (3)				
(15) NO₂ (as N)					* (4)				

20. CODED DESCRIPTION OF WASTE TREATMENT PROCESSES (Enter code numbers from Appendix A of instructions, in the order in which treatment steps occur.)

21. REMARKS

FWQA-120 (Rev. 4-70) (Page 2)
GPO 862-720

FORM APPROVED
BUDGET BUREAU NO.

U.S. DEPARTMENT OF THE INTERIOR
FEDERAL WATER QUALITY ADMINISTRATION
Washington, D.C.

INSTRUCTIONS FOR COMPLETING REPORT OF INDUSTRIAL WASTE WATER DISPOSAL

PART A—GENERAL

1. Purpose of this report

This report is designed to implement a national survey of manufacturing and processing plants to identify industrial waste water discharges, methods of disposal, and the types and effectiveness of treatment processes used to reduce the waste content of the water prior to discharge.

The ultimate objective is to obtain data on all plants discharging directly into waterways or to the various types of land disposal points. First priority will be given to coverage of those plants in industries using the largest amounts of water and to those where existing abatement needs have been identified.

2. Data coverage

(*a*) Report format and general instructions.

Page I of the report form, containing sections I through III, calls for general information about the plant and about its waste disposal system and related costs and manpower. Page 2 of the form calls for specific information on the quality and quantity of both intake and effluent water an on treatment processes used for each "separated waste discharge." For purposes of this survey, a "separated waste discharge" means a waste water effluent that has been isolated from others issuing from the plant for purposes of applying special treatment or by reason of its use where such use dictates the location of the discharge point (see item 14, pt. B, for further definition and explanation).

Where a plant has two or more separated waste discharges, a page 2 (sec. IV) of the report should be completed for each discharge. Only page 1 of the report need be completed. Under these circumstances, the multiple page 2's should be numbered consecutively in the upper right-hand corner beginning with sheet 2 and the total number of sheets in the report entered on each sheet Please insure that the plant name is entered on all page 2's of the report.

(*b*) Quantitative data.

Units of measure for all quantitative data are specified for each item. Where these data vary with seasons, or with plant utilization, etc., values provided should in general reflect averages as opposed to maximums or minimums.

3. Effective or "as of" date of reports

The "as of" date for data entered in this report will be specified in forwarding correspondence.

4. Submission of reports

The form is provided in quadruplicate with three assemblages of page 2 to provide for reporting separated discharges. (See general instruction 2 above and specific instructions for sec. IV.) Please return the original and the copies of the completed form to:

Department of the Interior,
Federal Water Quality Administration,
Washington, D.C. 20242.
Attention Code 711.

PART B—SPECIFIC INSTRUCTIONS AND DEFINITIONS

Instructions for Page 1 of FWQA Form 120

Section I—Plant identification

Item 1.—Plant and company name and location.

Give plant name and, where applicable, company affiliation. Give exact location of the plant in terms of street address, city, county, or township, state, and ZIP code Where the plant is located in a rural area, give the name of the nearest town or city and the distance and direction of the plant from the city. Give correct mailing address, if it differs from the above location data.

Item 2.—Parent company or corporation.

If the plant and/or company named in item 1 is part of a larger corporation, indicate its status as a branch, division, or subdivision, and give the name and address of the parent corporation headquarters.

Item 3.—Official forwarding this report.

The individual named here will be considered a contact point for any correspondence which may arise in connection with the report.

Item 4.—Date of report.

Enter date on which the report is forwarded.

Item 5.—Industrial classification.

Enter the principal products or processes of plant. If the standard industrial classification codes established by the Bureau of the Budget are known, enter under "Primary" that which corresponds to the principal product and under "Other" those corresponding to the second and third principal products, if any.

Item 6.—Plant operation

Indicate by check whether the plant operates year around or on a seasonal basis. If seasonal show the period, e.g., May through August. Show average hours per week of actual plant operation and under "No. Weeks Worked" the amount of time when operation is carried on by one, two and/or three shifts. Number of employees should reflect average number of production workers, excluding office force.

Section II—Water sources and waste discharge points

Item 7.—Give name and/or type of each source and check appropriate box(es) to show purpose of water intake. Where water source is a public water system show whether publicly or privately owned.

A surface water source (7b) may be an ocean, river, lake, stream, etc., from which a company owned and operated supply system draws water into the plant. A ground source (7c) is considered as company-owned with a company system supplying water to the plant. It may be a well, spring, etc. The type of each source should be indicated.

"Process" water, as used here, is defined as any water that comes directly into contact with the product or materials. "Sanitary service" includes all water other than that falling under the "process," "boiler feed," and "noncontact cooling" categories; such as that for drinking, lunchrooms, or cafeterias, and domestic sewage. "Boiler feed" is listed specifically since this constitutes a special use which may or may not require pretreatment of the intake water. "Noncontact cooling water" includes all cooling and condensing water used for steam electric power generation, air conditioning, et cetera.

"*Item 8.*—Give name and/or type of discharge point(s) and check appropriate blocks to show type(s) of discharge. Also, where discharge is to a public sewer, indicate by checking the appropriate boxes if it is publicly or privately owned and if a service charge is involved. Amount of charge need not be entered. For this purpose, a service charge is defined as a fee based on volume of discharged water, quality of the water discharged, or a combination thereof. It does not include charges which are identified with property or real estate taxes, connection charges, sewer maintenance levies, or flat fees unadjusted by changes in the volume or quality of the intake or discharge.

Discharge to ground means discharge to a point from which waste water does not directly reach a surface water body. Examples would be holding and/or evaporation ponds and diked areas with no outlets to surface water bodies; tile beds; spray or ditch irrigation; recharge spray directly into the ground; septic tanks; cesspools; et cetera. Specify type.

"Sanitary sewage" is defined as all domestic or sanitary service-type wastes. "Industrial" waste water includes the process water, boiler feed water and all others involved in the industrial process, excluding the noncontact cooling water defined under item 7 above. "Treated" or "untreated" applies to the status of the effluent as it reaches the discharge point.

Item 9.—Discharge of noncontact cooling water to a surface water body.

Where discharge of noncontact cooling water is to a surface water body temperatures are desired so that the number of B.t.u.'s discharged into a stream can be determined. Temperature of the source water is an important factor, since it may differ significantly from that of the water receiving the effluent, and the latter may be either higher or lower than the receiving water. All temperatures should be expressed in terms of annual averages. Where recirculation is involved, check box and show other water quality indicators by completing a section IV for "blowdown" as a "separated waste discharge." See item 14 of instructions.

Note: If total discharge is to a public sewer and no pretreatment is provided either for intake water or for waste water discharge, skip section III of the report and complete parts of section IV where applicable.

Section III—Waste treatment facilities costs and manpower requirements

Item 10.—Select from the treatment processes given in appendix A to these instructions, those which best describe the most advanced treatment capability of the original treatment facility and of the subsequent improvements, if any, and enter code numbers of these processes under "Type." Indicate the year the facility or improvement was placed in operation and the cost at time of construction. If more than three additions or improvements are involved, use space provided under "Remarks" (item 13 of form) or add an extra sheet and note this under "Remarks." Use space under item 13 also for any expansion or explanation of entries in items 11 and 12. Describe any treatment facility under construction at the time of this report.

Item 11.—Enter by the most appropriate category the numbers of employees assigned to the management, operation and maintenance of the waste water collection and treatment system. General descriptions of duties and qualifications for each category are given in appendix B to these instructions. Number should include all individuals, full-time and part-time, who require specialized skills and knowledge in water pollution control technology.

Item 12.—Expenditures and manpower levels for water treatment for past year and estimates for next 5 years.

"Give estimates in terms of the current dollar. Use "Remarks" space under item 13 for explanation, if desired. If funding cannot be broken down by specific years, give the average amount per year for the 5-year period or for the period covered by planned budget if less than 5 years.

In computing cost of operations and maintenance, include labor, materials such as replacement parts and chemicals, and other costs which can be directly related to the collection, control, and treatment system.

"Under item 12c, the number shown in the past year block (1) should equal the total of all entries in item 11. Project the numbers required over the next 5 in accordance with planned expansion, additions and/or changes to the system.

Item 12d calls for an overall estimate of man-years devoted to pollution control and abatement. Using an arbitrary figure of 2,000 man-hours as the time worked in 1 year by a full-time employee, compute the total number of man-hours expended (current year) or estimated to be expended over the next 5 years by both full and part-time employees, and divide the total by 2,000 to obtain equivalent man-years.

Item 13.—Remarks.

Use this space for any desired expansion or explanation of entries in items 10, 11, and 12.

Instructions for page 2 of FWQA form 120

At top of page 2 of the form enter the name of the plant as given on page 1 and enter appropriate sheet numbers.

Section IV—Water analysis

A section IV should be completed for each "separated waste discharge," which as used here, is a waste water effluent that has been isolated from others issuing from the plant for purposes of treatment or by reason of its use where such use dictates location of the discharge point.

Item 14A.—"Name of separated waste discharge" means the type, location, or other means of describing or diffentiating among discharges from any one plant.

Examples of separated waste discharges are:

Waste pickle liquor
Oily water
Rinse water
Waste flume effluents
Quenching wastes
Hot well effluents
Boiler blowdown
Cooling tower blowdown
Gas scrubber water

If two or more effluents containing different wastes are combined before treatment into one discharge, the name should give some idea of what types have been combined. If *all* wastes are combined into one discharge use the name "combined" and make out only one section IV. Also, if for reasons of volume, convenience, control, and so forth, there are a number of discharges physically located separately but discharging the same type of waste water, they may be treated as one discharge, and only one section IV is required.

Item 14 B, C, D.—Self-explanatory.

Item 15.—Equivalent production. The purpose of this item is to provide information which allows correlation of product output with outflow of waterborne wastes. Such information is essential for determining: pollution control requirements that are realistically related to manufacturing activity; the waste to product ratio of various production technologies; and assessments of the extent to which process modifications might effectively be substituted for waste treatment.

The unit entered here can be one of input to, or output from the plant, whichever is the more convenient or definitive. For instance, from the examples listed below: it may be more convenient for the "milk products" industry to use the input unit of "1,000 pounds, raw milk," than it is to use the output in terms of the various products; also, for the "brewery" industry, it may be more convenient to use the output unit, "barrels of beer," than to attempt to measure the input ingredients.

List of examples

Industry	*Unit*
Meat slaughtering	1,000 pounds, live weight.
Meat processing	1,000 pounds, finished weight.
Poultry processing	1,000 pounds, dressed weight.
Fish	1,000 pounds, product.
Milk products	1,000 pounds, raw milk.
Fruit and vegetable canning	1,000 cases, No. 303 cans.
Dehydrated potatoes	Tons, raw potatoes.
Beet sugar	Tons, sugar beets.
Brewery	Barrels of beer.
Pulp	Tons, dried pulp.
Paper	Tons of paper.
Petroleum refinery	Barrels of crude oil.
Phosphate fertilizer	Tons of phosphate rock.
Nitrogen fertilizer	Tons per day of rated NH_3 synthesis capacity.

If the rated production capacity of the plant has been published and the figures are still accurate, give the date and source and use the published data.

The amount per operating day should be a multiple of the basic unit rounded off to the nearest whole number, that is, if the unit for a meat slaughtering plant is "1,000 pounds, live weight" and 22,000 pounds is the average handled per day, then the entry should be "22."

Item 16.—Point of discharge. Indicate by checking appropriate box whether this separated waste discharge is to a public or private sewer, a surface water body, or the ground. Give latitude and longitude of the actual point of discharge if to surface water or ground.

Item 17.—If the discharge is to the ground, indicate the type. If to a surface water body, give the precise location of the discharge point in terms of distance from the shore or bank, and the distance below the surface if the outfall is underwater.

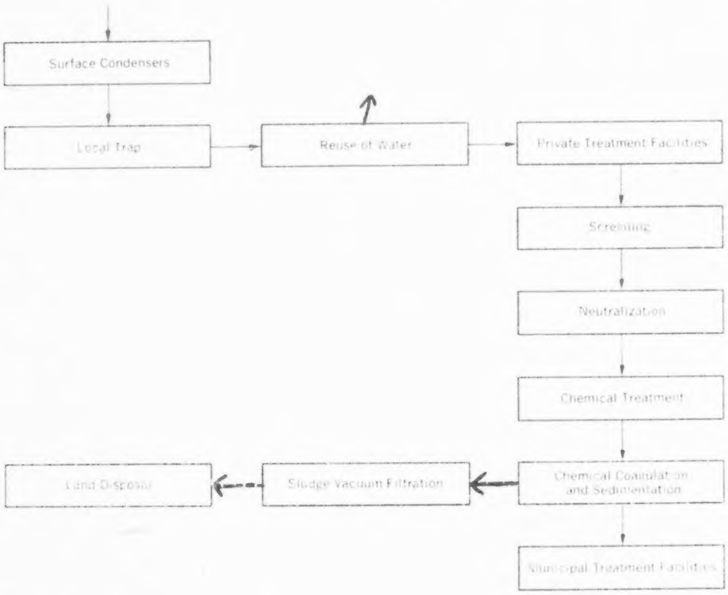
Item 18.—Effluent sample collection and analysis. Check appropriate boxes to indicate type of sample, frequency, and by whom analyzed. Give dates the samples were taken.

Item 19.—Water quality indicators. The indicators given under 19a through 19f are not intended to apply to all industries nor is it expected that all of them will apply to any one industry. They were selected as representing, in general, the most common measurements of water quality. Space has been provided under 19g for indicating other characteristics which may apply to specific waters, such as bacterial content, turbidity, specific organic chemicals, radioactive elements, et cetera. Where entries are made here, indicate the unit of measurement. (Note that all measurements under 19f are to be expressed in milligrams per liter.) Provision is made for recording quality of both the intake and effluent waters before and after treatment. If it is not necessary to treat intake water before use or if waste water is not treated before discharge enter "none" in appropriate column. If byproduct removal or reuse is involved in the plant process, make entries in the "before treatment" column based on quality after the byproduct is removed.

If water quality data of the type requested in this item have been compiled within the past year for a local, State, or Federal Government agency, and the data are still accurate, a copy of such report may be submitted in lieu of completing the item.

Item 20.—Using the list of treatment processes in appendix A, identify those which best describe the scope and nature of water treatment at this plant. List the code numbers of the processes in the order in which the treatment occurs so that they can be reconstructed into a flow diagram. For example, the industrial waste water treatment facility in the diagram shown below for one separate waste stream would be reported as follows:

"Coded description of waste treatment process(es)—103, 401, 304, 701, 801, 810, 812, 841, 702, 833, and 836."


Surface Condensers
Local Trap
Reuse of Water
Private Treatment Facilities
Screening
Neutralization
Chemical Treatment
Chemical Coagulation and Sedimentation
Sludge Vacuum Filtration
Land Disposal
Municipal Treatment Facilities

Item 21. Remarks

Use this space to furnish additional information or explanation of entries for the separate waste discharge reported.

Appendix A.—Industrial Waste Water Pollution Abatement Measures

IN-PLANT CONTROL MEASURES

100 Series—Engineering Design Considerations

101 Installation of separate drainage systems
102 Segregation and collection of specific wastes
103 Use of surface condensers in place of barometric condensers
104 Use of various water conservation measures and facilities
105 Emergency storage facilities
106 Countercurrent use of chemicals and/or wash waters
107 Use of pumps and valves with special seals to minimize leakage
109 Not defined above

200 Series—Process Design Modifications

201	Use of reaction chemicals or feed stocks producing minimum waste
202	Continuous versus batch processes
203	Chemical regeneration
204	Downgraded use of chemicals
205	Elimination of air blowing and water washing
206	Physical separators
207	Change in design basis for chemical recovery facilities
208	Modifying operating conditions
209	Not defined above

300 Series—Recovery and Utilization

301	Recovery of material for reuse in process
302	Downgraded use of spent chemicals in other processes
303	Use or sale of waste as raw material for other processes
304	Recycle or reuse of water
305	Heat recovery
309	Not defined above

400 Series—Local Pretreatment or Disposal

401	Local separators and traps
402	Evaporation and incineration of noxious liquid wastes
403	Use of emulsion prevention chemicals
409	Not defined above

500 Series—Operation Control

501	Automatic versus manual process controls
502	Control of production to minimize losses
503	Administrative control of waste water discharge
504	Monitoring sewer effluents
505	Management followup on losses
509	Not defined above

600 Series—Good Housekeeping

601	Conservation and cleanup programs
602	Publicity and educational releases
603	Employee training
609	Not defined above

WASTEWATER DISPOSAL MEASURES

700 Series—Discharge to Treatment Facility

701	Private facilities
702	Public facilities
703	Cooperative facilities
704	Contract disposal
705	Transportation to more receptive environment
706	Storm water drainage
709	Not defined above

WASTEWATER TREATMENT UNIT OPERATIONS

800 Series—Physical Pretreatment

800	Equalization
801	Screening
802	Preaeration
803	Sedimentation
804	Flotation
805	Temperature control
809	Not defined above

810 Series—Chemical Pretreatment

810	Neutralization
811	Primary chemical coagulation
812	Chemical treatment
813	Odor control
814	Nutrient addition
819	Not defined above

820 Series—Biological Treatment

820	Stabilization basins
821	Activated sludge
822	Trickling filter
823	Aerated lagoon
824	Anerobic contact (6 to 12 hours)
825	Anerobic pond (3 to 30 days)
826	Denitrification
827	Aerobic or anaerobic digestion or solids
829	Not defined above

830 Series—Sludge Handling

830	Thickening
831	Lagooning or drying bed
832	Centrifugation
833	Vacuum filtration
834	Dry combustion
835	Wet combustion
836	Land disposal
837	Sea disposal
839	Not defined above

840 Series—Terminal Secondary Treatment

840	Biological sedimentation
841	Final chemical coagulation and sedimentation
842	Sand filtration
843	Diatomite filtration
844	Chlorination
849	Not defined above

ADVANCED WASTE TREATMENT

850 Series—Temperature Change Processes

850	Evaporation
851	Freezing
852	Distillation
853	Eutectic freezing
854	Wet oxidation
855	Process residue, handling, and disposal
859	Not defined above

860 Series—All Other

860	Adsorption
861	Electrodialysis
862	Ion exchange
863	Solvent extraction
864	Reverse osmosis
865	Foaming
866	Chemical treatment
867	Electrochemical treatment
868	Process residue, handling, and disposal
869	Not defined above

900 Series—Treated Waste Water Disposal

901	Controlled discharge
902	Surface storage and evaporation
903	Deep well disposal
904	Surface (spray) irrigation
905	Ocean disposal
906	Surface discharge
909	Not defined above

APPENDIX B.—MANPOWER CATEGORIES EMPLOYED IN INDUSTRIAL WASTE WATER TREATMENT PLANTS

A. Superintendent.—Responsible to plant manager for supervision of water pollution control function. Deals with Government agencies on waste discharge and water quality problems. Oversees design, operation, maintenance, and administrative activities associated with waste water treatment facilities.

B. Engineer.—Designs and/or supervises construction, operation, or maintenance activities. Analyzes problems caused in treatment and disposal of waste waters; formulates processes or recommendations for alleviation of detrimental conditions.

Sanitary engineer.—Same as engineer but requires skills and knowledge that can best be obtained through a degree in sanitary engineering.

C. Chemist.—Performs qualitative and quantitative chemical or physical analyses of process waters to determine composition and properties. Provides technical advice within his specialty for supervisory or other management engineering personnel. Assists in special problems, development of test and process methods, improves procedures for quality control of tests and their interpretation. May supervise laboratory technicians.

D. Microbiologist.—Performs laboratory analyses to determine the presence and concentration of certain micro-organisms. May perform direct microscopic examinations or other special tests for evaluation of microbiological problems in waste water treatment processes. Within his area of specialization provides technical advice to engineers, chemists, and others concerning interpretation of microbiological and bacteriological data and observations and the handling of related problems. May supervise laboratory technicians.

E. Laboratory technician.—Performs qualitative and quantitative tests of a physical, chemical, or bacteriological nature. Tests are made on process waters according to prescribed procedures as designated by his supervisors.

F. Senior operator—foreman (nonengineer).—Supervises and coordinates activities of workers in operation and maintenance of various elements of waste water collection and treatment facility.

G. Operator.—Works with minimum supervsion. Starts, stops, and adjusts flows on the basis of his interpretation of instrument readings and tests results. May perform operational control tests. Performs or oversees preventive and breakdown maintenance. Gives direction to attendants and unskilled workers.

H. Instrument repairman.—Installs, repairs, maintains, and adjusts indicating, recording, telemetering, and controlling instruments and analytical instruments of waste water treatment facility.

I. Maintenance man.—Skilled mechanic (includes general mechanics, plumbers, electricians, pipefitters, machinists, etc.) who repairs and maintains machinery, plumbing, physical structure, electrical wiring, motors, and other components of waste collection and treatment system.

J. Attendant.—Operates designated equipment according to specific instructions. Starts, stops, and adjusts flows and equipment in line with precise instructions. Performs routine maintenance tasks, e.g., cleaning and lubrication. May keep log of instrument readings.

K. Unskilled.—Performs any combination of unskilled tasks, usually under continous supervision. Removes waste material, cleans equipment or facilities. He may perform operating or maintenance tasks under direct supervision of more experienced personnel.

L. Other.—All other employees engaged in administration, operation, and maintenance of waste water treatment and collection facilities.

B. FWQA'S SUPPORTING STATEMENT ON ITS REQUEST FOR BUDGET BUREAU CLEARANCE OF ITS QUESTIONNAIRE FORM 120 (4-70) AND PLAN FOR COLLECTING DATA ON INDUSTRIAL WASTE DISCHARGES

A. The Federal Water Quality Administration is responsible for carrying out the provisions of the Federal Water Pollution Control Act, as amended (hereinafter referred to as the act). A prime requisite to the accomplishment of this mission is an up-to-date, point-by-point identification of the location and nature of waste discharges which could pollute or degrade the receiving waters. These data are equally vital to the States' water pollution control agencies which have been termed the first line of defense against pollution.

The Federal act specifically imposes a duty upon the Secretary in this regard. The Secretary is directed in section 5(c) of the Federal act to collect and disseminate basic date on chemical, physical, and biological water quality and other information insofar as such data or other information relate to water pollution and the prevention and control thereof. These data are needed for almost every aspect of the Federal water pollution control program, including construction, research and demonstration grant programs, enforcement activities, and direct agency activities.

Specific needs and uses for these data include but are not limited to:

1. The need for identifying, locating, and investigating waste discharges which may adversely affect receiving waters for the purpose of preparing comprehensive plans, for eliminating or reducing pollution of the waters, and to identify, in advance, potential pollution problems so that necessary action to conserve waters can be taken for purposes of sections 3 (a) and (b) of the act.

2. Need to provide basic data on the nature and types of wastes discharges in support of the planning and execution of research, investigations, experiments, and demonstrations relating to the causes, control, and prevention of water pollution for purposes of sections 5 (a), (b), and (d) of the act.

3. Need to provide in support of the construction grants program for providing Federal financial aid in the construction of municipal waste facilities, the impact of the processing of industrial wastes through municipal systems for purposes of section 8 of the act.

Recently issued regulations—Federal Register, July 2, 1970, CFR, paragraph 601.32 through 601.36—require the development of basin plans, including identification and impact of all industrial waste discharges in the basin, prior to approval of any construction grant for a municipal facility within the basin.

4. Need to provide, in support of the manpower and training program, data on current levels of, and forecasted requirements for, personnel to supervise and operate waste treatment facilities. These data are required in the planning for and execution of the training grants and contracts program and the award of scholarships in this area for purposes of section 5(g) and sections 16 through 19 of the act.

5. Needs to provide information for annual reports to Congress on existing and needed waste facilities, the cost thereof, and other pollution control and abatement requirements for purposes of section 26 of the act.

The two greatest threats to water quality and municipal and industrial wastes. For the former, adequate data have been collected to meet requirements of the above paragraph. For the latter, however, virtually no data exist. This lack of information has seriously hindered the planning and execution of pollution control and abatement programs.

Special congressional interest in establishing a continuing comprehensive industrial wastes inventory has been prominent since 1963, when hearings on the subject were held by the Natural Resources and Power Subcommittee of the House Committee on Government Operations. Representative Jones (Alabama), who was then chairman of this committee, strongly recommended such an inventory in a series of letters, first to Secretaries Celebrezze and Gardner, when Health, Education, and Welfare had the water pollution control function, and later to Secretary Udall when it was transferred to the Department of the Interior. In addition, the findings of this committee were documented in the Thirteenth Report of the Committee on Government Operations—"The Critical Need for an Inventory of Industrial Wastes," dated June 24, 1968. This subcommittee, now called the Natural Resources and Conservation Subcommittee, and chaired by Representative Reuss (Wisconsin) has registered its continued interest in several letters to Secretary Hickel this year.

Three separate applications have previously been made to secure approval for conducting the subject inventory. The first, initiated by the Public Health Service in 1964, was never implemented, since the nationwide effort proposed was reduced by the Bureau of the Budget to a suggested trial run in one river basin with resulting data to be treated as confidential and PHS did not concur. The second application, initiated by FWPCA in April 1967, was based on use of a revised version of the form proposed in the 1964 effort.

BOB action on the second submission was deferred until two Congressionally directed FWPCA studies involving industry could be completed. The form was resubmitted in July 1968 and final action was again deferred pending decision by FWPCA on acceding to a request by industry that data submitted be treated as confidential. In February 1970 action was suspended on this application.

The 1968 form has now been reviewed for adequacy to meet current requirements. A draft of the revised form (4–70) has been prepared and is submitted herewith. Changes in the form from the 1968 form are discussed in Section D.

It is not anticipated that this form will be used on a regular repetitive basis insofar as this may involve periodic mailings to industry. It may be used for recording additions or changes to the inventory, when established, in accord with continuous update procedures to be mutually established and agreed upon by the States water pollution control agencies and FWQA regional offices.

B. Reflecting guidance received from the Office of Management and Budget. The inventory is now planned in two phases with a distinct time to lag between the two phases to provide time for analysis and any necessary modification to plans and procedures.

The first phase will consist of an initial mailing to approximately 250 industries to provide a reasonable sampling both in types of industry and in the various areas of the country. Upon receipt of the information developed by this initial mailing an analysis will be made of the amount and type of information received and the rate of reply. At least one followup will be carried out on replies not received. The analysis of this initial phase will provide FWQA with information on which to base improved plans and procedures. The total of the first phase should be accomplished in approximately 4 months.

The second phase of the inventory will consist of a mailing covering 10,000 to 12,000 plants and will incorporate the improved procedures developed above. It is tentatively planned that mailing will be direct to industry but with close coordination and cooperation with any similar activities being conducted by the States.

Eventually, it is intended that the inventory will be made as complete as possible, including all industrial classifications. The pilot survey described below was conducted on this basis. The current, nationwide, proposed effort will place priority on coverage of: (1) industrial plants for which abatement needs are identified in the implementation plans and schedules of the States' water quality standards and (2) plants with the following standard industrial classification codes:

Industry	*Standard industrial classification code*
Food and kindred products	20
Textile mill products	22
Paper and allied products	26
Chemicals and allied products	28
Petroleum refining and related industries	29
Primary metal industries	33
Transportation equipment (motor vehicles)	3, 711

The revised form has been used in-house to assemble and record data already in FWQA files on industrial plants located within one minor river basin of each of the nine regions. This pilot survey was conducted to assess the scope and value of data on hand and to determine further action to be taken to establish a nationwide inventory. Data received was woefully inadequate and a need for a direct approach to industry was clearly indicated. Clearance of the form is therefore requested in anticipation of further action on this basis.

C. Participation of industry in this survey and submission of data by industry will be purely voluntary. Data accumulated in the inventory will be edited, coded, and processed into a central computer providing direct access through telecommunications terminals to FWQA regional and field offices and through them to State, interstate, and local water pollution control agencies. Release and/or other dissemination of the collected data will be governed by the provisions of title 18, United States Code, section 1905. Other than an aggregated statistical summary, no publication is planned at this time.

D. The form submitted herewith has been revised from the 1968 version in that several items have been deleted or completion of the item is now optional. Questions on the age of the plant, discharge permits, and sludge or other waste water treatment solid residual have been added. Also, minor changes have been made in some items mainly in format.

The 1968 version was thoroughly reviewed by the staff and field offices of FWPCA and other organizations and individuals including:

Other interested Federal water resources agencies;
An industrial panel of the Presidential Advisory Council on Federal Reports;
Ad hoc Task Force for Water Use Data Research, Committee on Water Resources Research;
Joint Committee on Water Quality Management Data, Conference of State Sanitary Engineers;
Division of Sanitary Engineers, Department of Health, Pennsylvania;
Director, Bureau of Engineers, State Board of Health, State of Indiana;
Director, Division of Water Resources, National Resources Department, State of Wisconsin;
Executive secretary, Missouri Water Pollution Board;
Mr. Owen C. Gretton, Chief, Industry Division, Bureau of Census;
Mr. Harry A. Steele, Assistant Director for Planning and Research, Adviser, Water Resources Council;
Mr. Ernest L. Hendricks, Chief Hydrologist, Geological Survey.

Time required to complete the form will vary according to the numbers of "separated waste discharges" (see instructions) which exist at a plant. Forwarding correspondence will state that information reported should be that already available in plant records, hence, an estimate of 1 to 4 hours is made. The correspondence will also indicate that, if the water quality data requested under section IV, item 19, has been recently (within the last 6 months) compiled for a regulatory agency or study group, a copy of the report may be submitted in lieu of completing item 19.

APPENDIX 4.—FEDERAL REPORTS ACT OF 1942, AS CODIFIED BY THE ACT OF OCTOBER 22, 1968 (PUBLIC LAW 90-620; 82 STAT. 1302; 44 U.S. CODE, SUPP. V, SECS. 3501-3509)

CHAPTER 35—COORDINATION OF FEDERAL REPORTING SERVICES

Sec.
3501. Information for Federal agencies.
3502. Definitions.
3503. Duties of Director of the Bureau of the Budget.
3504. Designation of central collection agency.
3505. Independent collection by an agency prohibited.
3506. Determination of necessity for information; hearing.
3507. Cooperation of agencies in making information available.
3508. Unlawful disclosure of information; penalties; release of information to other agencies.
3509. Plans or forms for collecting information; submission to Director; approval.
3510. Rules and regulations.
3511. Penalty for failure to furnish information.

§ 3501. Information for Federal agencies

Information needed by Federal agencies shall be obtained with a minimum burden upon business enterprises, especially small business enterprises, and other persons required to furnish the information, and at a minimum cost to the Government. Unnecessary duplication of efforts in obtaining information through the use of reports, questionnaires, and other methods shall be eliminated as rapidly as practicable. Information collected and tabulated by a Federal agency shall, as far as is expedient, be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public. [Sec. 2 of 1942 Act.]

§ 3502. Definitions

As used in this chapter—

"Federal agency" means an executive department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration in the executive branch of the Government; but does not include the General Accounting Office nor the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions;

"person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of persons, a State or territorial government or branch, or a political subdivision of a State or territory or a branch of a political subdivision;

"information" means facts obtained or solicited by the use of written report forms, application forms, schedules, questionnaires, or other similar methods calling either for answers to identical questions from ten or more persons other than agencies, instrumentalities, or employees of the United States or for answers to questions from agencies, instrumentalities, or employees of the United States which are to be used for statistical compilations of general public inteerst. [Sec. 7 of 1942 Act.]

§ 3503. Duties of Director of the Bureau of the Budget

With a view to carrying out the policy of this chapter, the Director of the Bureau of the Budget from time to time shall—

(1) investigate the needs of the various Federal agencies for information from business enterprises, from other persons, and from other Federal agencies;

(2) investigate the methods used by agencies in obtaining information; and

(3) coordinate as rapidly as possible the information-collecting services of all agencies with a view to reducing the cost to the Government of obtain-

ing information and minimizing the burden upon business enterprises and other persons, and using, as far as practicable, for continuing organization, files of information and existing facilities of the established Federal agencies. [Sec. 3(a) of 1942 Act.]

§ 3504. Designation of central collection agency

When, after investigation, the Director of the Bureau of the Budget is of the opinion that the needs of two or more Federal agencies for information from business enterprises and other persons will be adequately served by a single collecting agency, he shall fix a time and place for a hearing at which the agencies concerned and other interested persons may have an opportunity to present their views. After the hearing, the Director may issue an order designating a collecting agency to obtain information for two or more of the agencies concerned, and prescribing (with reference to the collection of information) the duties and functions of the collecting agency so designated and the Federal agencies for which it is to act as agent. The Director may modify the order from time to time as circumstances require, but modification may not be made except after investigation and hearing. [Sec. 3(b) of 1942 Act.]

§ 3505. Independent collection by an agency prohibited

While an order or modified order is in effect, a Federal agency covered by it may not obtain for itself information which it is the duty of the collecting agency designated by the order to obtain. [Sec. 3(c) of 1942 Act.]

§ 3506. Determination of necessity for information; hearing

Upon the request of a party having a substantial interest, or upon his own motion, the Director of the Bureau of the Budget may determine whether or not the collection of information by a Federal agency is necessary for the proper performance of the functions of the agency or for any other proper purpose. Before making a determination, he may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines the collection of information by the agency is unnecessary, for any reason, the agency may not engage in the collection of the information. [Sec. 3(d) of 1942 Act.]

§ 3507. Cooperation of agencies in making information available

For the purposes of this chapter, the Director of the Bureau of the Budget may require a Federal agency to make available to another Federal agency information obtained from any person after December 24, 1942, and all agencies are directed to cooperate to the fullest practicable extent at all times in making information available to other agencies.

This chapter does not apply to the obtaining or releasing of information by the Internal Revenue Service, the Comptroller of the Currency, the Bureau of the Public Debt, the Bureau of Accounts, and the Division of Foreign Funds Control of the Treasury Department, nor to the obtaining by a Federal bank supervisory agency of reports and information from banks as authorized by law and in the proper performance of the agency's functions in its supervisory capacity. [Sec. 3(e) of 1942 Act.]

§ 3508. Unlawful disclosure of information; penalties; release of information to other agencies

(a) If information obtained in confidence by a Federal agency is released by that agency to another Federal agency, all the provisions of law including penalties which relate to the unlawful disclosure of information apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information. The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

(b) Information obtained by a Federal agency from a person under this chapter may be released to another Federal agency only—

(1) in the form of statistical totals or summaries; or

(2) if the information as supplied by persons to a Federal agency had not, at the time of collection, been declared by that agency or by a superior authority to be confidential; or

(3) when the persons supplying the information consent to the release of it to a second agency by the agency to which the information was originally supplied; or

(4) when the Federal agency to which another Federal agency releases the information has authority to collect the information itself and the authority is supported by legal provision for criminal penalties against persons failing to supply the information. [Sec. 4 of 1942 Act.]

§ 3509. Plans or forms for collecting information; submission to Director; approval

A Federal agency may not conduct or sponsor the collection of information upon identical items, from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection—

(1) the agency has submitted to the Director the plans or forms, together with copies of pertinent regulations and of other related materials as the Director of the Bureau of the Budget has specified; and

(2) the Director has stated that he does not disapprove the proposed collection of information. [Sec. 5 of 1942 Act.]

§ 3510. Rules and regulations

The Director of the Bureau of the Budget may promulgate rules and regulations necessary to carry out sections 3501–3511 of this title. [Sec. 6 of 1942 Act.]

§ 3511. Penalty for failure to furnish information

A person failing to furnish information required by an agency shall be subject to penalties specifically prescribed by law, and no other penalty may be imposed either by way of fine or imprisonment or by the withdrawal or denial of a right, privilege, priority, allotment, or immunity, except when the right, privilege, priority, allotment, or immunity is legally conditioned on facts which would be revealed by the information requested. [Sec. 8 of 1942 Act.]

APPENDIX 5.—CORRESPONDENCE WITH ADVISORY COUNCIL ON FEDERAL REPORTS, AND RELATED MATERIALS

ADVISORY COUNCIL ON FEDERAL REPORTS,
Washington, D.C., September 4, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee of the Committee on Government Operations, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: My response to your letter of August 25 [an invitation from Chairman Reuss to testify at the subcommittee's September 17, 1970, hearing] has been delayed as a result of my being away on a brief vacation.

In behalf of the Advisory Council on Federal Reports, of which I am currently serving as Chairman, I should like to thank you for your invitation to participate in the hearing of the Conservation and Natural Resources Subcommittee of the Committee on Government Operations on Thursday, September 17 on the subject of a national inventory of industrial wastes.

I think that everyone will agree that Government, industry, and the general public are quite conscious of and greatly concerned about the problem of pollution in the United States and internationally. Moreover, interested parties are anxious to make a contribution to solution of pollution problems and, where appropriate, to the development of information necessary to accomplishing that objective. In this connection, as you point out, a panel of individuals organized under the auspices of the Advisory Council on Federal Reports met with representatives of the Bureau of the Budget and other Government officials on August 13, 1968, and offered certain suggestions and comments with respect to a proposed questionnaire on industrial waste water disposal.

This panel met at the request of the Bureau of the Budget which utilizes the Advisory Council on Federal Reports and committees and panels organized by the Advisory Council for the purpose of obtaining comments on various questionnaires and reports proposed by Government departments and agencies. The decisionmaking authority with respect to approval of such questionnaires and reports is placed in the Bureau of the Budget under the Federal Reports Act; the Advisory Council performs simply an advisory function and presents comments and suggestions only at the request of the Bureau of the Budget.

In view of the limited role of the Advisory Council on Federal Reports and the fact that it functions at the pleasure of the Bureau of the Budget, I have serious question as to whether it would be appropriate for an official representative of the Advisory Council to participate in such a hearing as your subcommittee is conducting. Moreover, as Chairman of the Advisory Council, I believe it is fair to say that I and other members of the Council do not have special expertise in the field of pollution, and more particularly with respect to the collection and interpretation of data on industrial wastes. To put the matter another way, contrary to the suggestion which you make on page 3 of your letter of August 25, the Advisory Council on Federal Reports does not feel that in a congressional hearing it is the proper spokesman for industry at large on the best means possible to facilitate the establishment of a voluntary industrial wastes inventory at the Federal level.

I trust that in responding in this manner you will not attribute to the Council or to any of its members a lack of interest in the work now being carried on within Government and in industry on the subject of pollution control. On the other hand, in deference to your conducting the most informative meeting possible and in view of the limited role of the Advisory Council on Federal Reports, I hope you will understand our reasoning in respectfully requesting that the Advisory Council as an organization be excused from participating in your forthcoming hearing or filing a formal statement for the record.

Beyond this general response to your invitation with respect to making a formal presentation to your subcommittee and recognizing that, as previously acknowledged, a panel of the Advisory Council on Federal Reports met in 1968 at the request of the Bureau of the Budget and made certain suggestions to the Bureau and interested Government agencies on a proposed questionnaire on industrial wastes, I will give further consideration to submitting to you in advance of your subcommittee's hearing certain comments or questions which might be taken into consideration during the course of your subcommittee's proceedings. Perhaps in this way, in behalf of the Advisory Council, I can be somewhat helpful to your subcommittee as it considers the concept and possible implementation of a national inventory of industrial wastes. Meanwhile, since you have indicated that the hearing will be operating on a tight schedule and you have asked for an early response, I am giving you this general reaction to your invitation as soon as possible.

Respectfully,

CHARLES W. STEWART, *Chairman.*

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 8, 1970.

Hon. CHARLES W. STEWART,
Chairman, Advisory Council on Federal Reports,
1001 Connecticut Avenue NW.,
Washington, D.C.

DEAR MR. STEWART: Thank you for your letter of September 4, 1970, responding to our invitation to you to testify on behalf of the Advisory Council on Federal Reports at our subcommittee's hearing on September 17 concerning a national inventory of industrial wastes.

Your letter requests that you be "excused from participating" in our hearing "or filing a formal statement for the record." Your letter says that you and the members of the Council "do not have special expertise in the field of pollution, and more particicularly with respect to the collection and interpretation of data on industrial wastes." Your letter also says that the Council "does not feel that in a congressional hearing it is the proper spokesman for industry at large on the best means possible to facilitate the establishment of a voluntary industrial wastes inventory at the Federal level."

Industry will, of course, be affected by the outcome of the hearing. We invited the Advisory Council because it is specifically organized and "financed and its members appointed" by the national business organizations listed on the Council's stationery to advise the Budget Bureau "on simplifying and improving Federal questionnaires, reporting procedures and statistical programs." Further, the Council has, for years, advised the Budget Bureau on the very topic which is the subject of our hearing.

Minutes of your Council's meetings with the Budget Bureau show that Council members representing many types of industries have dealt with this subject in great detail. They discussed and advised on the need for, and the desirability of, a national industrial wastes inventory. Their discussions and advice also dealt in considerable detail with the specific format and questions of the proposed questionnaire form as well as the use to which the data would be put. At the Council's urging the Federal Water Quality Administration brought up to date its report on the "Cost of Clean Water" before initiating the inventory. The minutes indicate that those discussions reflected considerable industry experience with various problems both of pollution control and in the collection and interpretation of data on waste discharges. However, since the minutes are simply summaries, we believe it would be most helpful to our subcommittee, and to the Congress to whom we shall report our findings, that these minutes be amplified and industry's views and testimony be expressed at our hearing through the Council.

We therefore believe it is regrettable that you and the Council decline to participate in our hearing. We hope you will reconsider and decide to participate. We shall welcome your views.

We shall appreciate your early response.

Sincerely,

HENRY S. REUSS, *Chairman.*

ADVISORY COUNCIL ON FEDERAL REPORTS,
Washington, D.C., September 11, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee of the Committee on Government Operations, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the request in your letter of September 8, we have carefully reconsidered the question as to whether the Advisory Council on Federal Reports should participate in a public hearing to be conducted by the Conservation and Natural Resources Subcommittee of the Committee on Government Operations regarding a proposed national inventory of industrial wastes.

We believe the reasons stated in my letter of September 4 are conclusive and that we should not, therefore, depart from our judgment that it is not appropriate for the Advisory Council on Federal Reports, which functions only as an advisory group to the Bureau of the Budget and its successor, the Office of Management and Budget, to participate in congressional hearings.

In our previous communication, we suggested that it might be helpful to your subcommittee if we were to raise informally some questions or issues which bear on the proposed national inventory of industrial wastes. In brief form, we set them out below:

1. Federal and State programs in the pollution field operate under statutes with provisions authorizing sanctions and penalties, as well as proceedings which are regulatory and adversary in character. These programs and their supporting statutes by their very nature are compulsory; there is no element of voluntarism. Under these circumstances, is it appropriate and consistent with established principles in this country to request industry to supply information on a voluntary basis without a complete assurance of confidentiality? (We believe statement of this issue is not at all inconsistent with the fact that many industries and companies have on their own initiative undertaken costly and extensive antipollution programs and will continue to do so.)

2. Is it not true that the question of confidentiality is relevant and significant not only for the reason stated in point No. 1 but also because certain of the information called for by a questionnaire to develop an inventory of industrial wastes might well be of a proprietary nature in a commercial sense?

3. Does the proposal for a national inventory of industrial wastes conform to, or conflict with, the express policy of the Congress enunciated in the Federal Water Pollution Control Act to "recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution"? Further, would not the undertaking of a national inventory of industrial wastes involve substantial duplication of information already available to the Federal Government from State sources or from other sources? If there are statistical problems in using State data, how can they be solved?

4. The pollution problem is not only a critical one from the standpoint of public policy, it is also very complex, and its solution requires the application of a wide range of professional disciplines. This raises the question as to whether even in respect to obtaining basic information, a broadside effort such as a nationwide Federal survey to obtain an inventory of industrial wastes is preferable to breaking the problem down into specific categories of information to be sought and interpreted. Moreover, wouldn't the latter approach as suggested in point 3, take advantage of information available to or obtainable by State authorities, which are much closer to the sources of pollution, the facilities involved and alternative corrective approaches.

5. There is widespread information in the press and in announcements by Federal and State agencies that they are invoking enforcement procedures and in some cases assessing penalties as to pollution. Would it not be reasonable to inquire into the extent to which these enforcement procedures are developing a body of information on industrial wastes broken down in such a manner that it is much more meaningful than would be the general across-the-board information collected by an overall Federal questionnaire?

6. As mentioned above, a number of State authorities are already being furnished data by affected industries and companies. Does this not raise the serious question of undue burden and cost, in addition to duplication and the probability that data collected at the State level would be more meaningful and more effectively tailored to the requirements of the particular State anti-pollution program.

7. Having in mind that many States are already collecting data on pollution and in view of a Federal questionnaire project already underway as referred to below, should not the Conservation and Natural Resources Subcommittee of the Committee on Government Operations also give consideration to other aspects of the pollution problem including the question of adequacy and propriety of incentives, tax and otherwise.

In stating these questions, some of which as you point out were discussed at the 1968 panel meeting of the Advisory Council on Federal Reports, we offer them in the spirit of encouraging a thorough re-evaluation of the proposal for a national inventory of industrial wastes. Having in mind our previously acknowledged technical limitations in this complex field, I think it is fair to say that with the exception of one question, we make no prejudgment. The question on which we do have a conviction, as you might anticipate, is point No. 1 above relating to confidentiality.

If the type of questionnaire which was proposed in 1968, or a questionnaire similar to that document, is employed in the present context of law and enforcement in the pollution area and in the light of proprietary situations affecting certain companies in terms of their planning, operating procedures, equipment installation and utilization, it would be entirely out of character in the American system to expect private companies to furnish voluntarily the pollution information in question without an absolute and complete assurance of confidentiality. Moreover, anything less than a pledge of full confidentiality would be unacceptable in our judgment.

Finally, as you may know, the Federal Water Pollution Control Administration proposed a survey relating to water pollution control in 1969 to be conducted by the National Industrial Conference Board under contract with FWPCA. A panel of the Advisory Council on Federal Reports met on July 17, 1969, in accordance with customary procedures of the Bureau of the Budget to offer comments on the proposed survey. These were received, considered and the Bureau of the Budget later approved a survey form. Just within the last several weeks this data request has been sent to some 2,500 companies.

The FWPCA-proposed questionnaire considered in 1968 was designed to be a more comprehensive survey, both as to information sought and total number of plants surveyed. This latter survey, we understand, is the one under current consideration. Two points would seem, logically, to be significant in such consideration. First, the experience gained in the survey now being conducted by the NICB for FWPCA will be very valuable both in designing a questionnaire of a broader character, and in tabulating and interpreting results, if such a broad questionnaire is actually issued. Under these circumstances, at the mimimum, it would seem that decision on a survey of the type to which your subcommittee seems to be addressing itself should be deferred to profit from this experience. Secondly, from statements made by FWPCA representatives at the Advisory Council panel session on July 17, 1969, the FWPCA chose the technique of contracting with the National Industrial Conference Board to make the survey for two principal reasons: first, that the NICB is a research organization with long-standing and broad experience in survey work, particularly surveys affecting industry; and second, by using the technique of the NICB as the collecting and analyzing agent with full confidentiality pledged both by it and the FWPCA, maximum response and, therefore, better data, was virtually assured. If a further survey is undertaken of the type proposed in 1968 for water pollution, or if another survey is considered desirable relating to air pollution, the technique of using an independent contractor with experience such as the National Industrial Conference Board might well be followed. In this connection, is it not fair to conclude that the validity of the confidentiality issue has been conceded by the FWPCA by its adoption of the procedure involving use of the NICB as a collection and interpretation agent with full confidentiality assured.

May we say in closing that although we feel obliged to adhere to the judgment previously communicated to you that it is not appropriate for the Advisory Council on Federal Reports to participate in congressional hearings, and although we continue to feel that our experience and knowledge with regard to this tremendously important and complex area of pollution is limited, we have raised the questions above in deference to the committee and in the spirit of trying to cooperate in every way appropriate in the light of the character of the Advisory Council and its relation to the Bureau of the Budget. We have also attempted to relate the recent development, namely the current survey being taken by NICB in behalf of FWPCA, to the objectives which you espouse and are set forth in the Thirtieth Report of the House Committee on Government Operations entitled "The Critical Need for a National Inventory on Industrial Wastes (Water Pollution Control and Abatement)" issued under date of July 24, 1968.

These comments are intended to be informal as distinguished from a formal statement. However, if you feel that our exchange of correspondence should be a part of the record, we would, of course, have no objection.

I regret that we cannot be of further assistance.

Respectfully,

CHARLES W. STEWART, *Chairman.*

MINUTES OF THE ADVISORY COUNCIL ON FEDERAL REPORTS

This information is supplied for your personal administrative use as an adviser to the U.S. Bureau of the Budget.

Meeting: Panel on Proposed Survey of Industrial Waste Water Disposal.

Date and time: Tuesday, August 13, 1968, 9:30 a.m.

Place: Conference room 10211, New Executive Office Building, 17th Street between Pennsylvania Avenue and H Street NW., Washington, D.C.

Presiding officers: Edward T. Crowder; Harold T. Lingard.

Present from industry: A. R. Balden, Chrysler Corp.; Robert R. Balmer, E. I. du Pont de Nemours & Co.; George E. Best, Manufacturing Chemists' Association; A. Dewey Bond, American Meat Institute; S. O. Brady, American Petroleum Institute; Everett R. Call, National Paint, Varnish & Lacquer Association; Daniel W. Cannon, National Association of Manufacturers; James Clabault, American Paper Institute; Jules A. Coelos, Jr., United States Steel Corp.; Jack Coffee, Chamber of Commerce of the United States; Wm. G. DeWitt, Corn Refiners Association; H. J. Dunsmore, United States Steel Corp; Floyd O. Flom, American Paper Institute; P. N. Gammelgard, American Petroleum Institute; W. H Garman, National Plant Food Institute; Fred J. Greiner, Milk Industry Foundation; Harry E. Korab, National Soft Drink Association; Fred Mewhinney, Millers' National Foundation; Stephen Palmer, National Association Frozen Food Packers; Austin Rhoads, National Canners Association; Harry E. Robbins, Manufacturing Chemists' Association; J. H. Rook, Manufacturing Chemists' Association; Robert H. Shields, U.S. Beet Sugar Association; Robert W. Smith, Ford Motor Co.; G. Don Sullivan, American Mining Congress; DeYarman Wallace, the Youngstown Sheet & Tube Co.; Charles E. Welch, Manufacturing Chemists' Association.

Present from Government: A. L. Alm, Bureau of the Budget; E. T. Crowder, Bureau of the Budget; H. T. Lingard, Bureau of the Budget; J. I. Bregman, Department of the Interior; Peter G. Kuh, Department of the Interior; W. A. Smith, Department of the Interior; James H. McDermott, FWPC, Department of the Interior; Joe G. Moore, Jr., FWPC, Department of the Interior; Jesse L. Lewis, FWPC, Department of the Interior; Jodie Scheiber, House Natural Resources & Power Subcommittee; K. L. Kollar, BDSA, Department of Commerce; L. J. Owen, Bureau of Census, Department of Commerce; O. C. Gretton, Bureau of Census, Department of Commerce.

Mr. Crowder as Chairman introduced officials present from the Government agencies and then asked others present to introduce themselves. He also briefly explained the functions of the Advisory Council on Federal Reports which sponsored the meeting and the procedures to be followed. Mr. Bregman, Deputy Assistant Secretary for Water Pollution Control, Department of the Interior, opened the discussion with a brief statement on the results of a meeting of representatives of interested Government agencies held in late July. He then turned the discussion over to Mr. McDermott, a member of the Federal Water Pollution Control Administration staff.

Mr. McDermott reviewed the history of the proposed survey back to 1964 when an early version of it was first submitted to the Bureau of the Budget for approval which highlighted data needs associated with basin planning. He emphasized the needs of both the Federal and State Governments for the data. He pointed out that, in addition to basin planning, subsequent Federal legislation with respect to water quality standards reemphasizes the need for specific point-by-point data covering industrial wastewater disposal practices and costs. Several recent reports required by Congress have also served to identify areas where data are lacking. The form, he said, has been discussed with other Federal agencies and State governments. Based on these discussions it has been simplified. The form requests the kind of data needed by both Federal and State Governments, and it also makes it possible for industry to report what it has done to control pollution.

Mr. Moore, Commissioner of the Federal Water Pollution Control Administration, stated that the need for adequate and accurate data is becoming more and more acute. There is a need to know what the cost of pollution control is going to be in order to permit intelligent planning. Industry already is probably spending more than is known. Mr. Moore noted a preference for a cooperative approach rather than a mandatory legislative approach in order to identify industrial pollution control progress and to satisfy the data needs of State and Federal water pollution control agencies.

Preliminary to any technical discussion of the form, panel members were invited to raise any major issues affecting the survey. Discussion at this point centered largely around: the need of the Federal Government for the data; the procedure for conducting the survey; and the issue of confidentiality.

Panel members questioned the proposed use of the data, stating that the Federal Water Pollution Control Act grants authority to the Federal Government to establish water quality standards only if the States fail to act. They also made the point that, for establishing water quality standards, information on actual discharges and waste loads is not necessary. On the other hand, if the Federal Government needed to act, a more comprehensive survey than the one proposed would be necessary.

Some industry representatives had misgivings about the need for the data in view of the cost of providing them. One suggestion was that the FWPCA report "Cost of Clean Water" be brought up to date. This report was based on profile studies prepared by contract consultants knowledgeable about pollution control efforts in specific industries. It was also suggested that there be a cutoff of some type so as to relieve some plants of reporting.

As to the proposed method of conducting the survey, it was argued that, since the FWPC Act is quite specific in defining the role of the States in water pollution control, FWPCA should seek the data it needs from State agencies first. In States where the data are not available, the proposed survey could be made to obtain them. A number of industry representatives felt that this was the more logical way to proceed. Many are already reporting to the States, and the Federal survey would in many instances result in duplicate reporting. It was suggested that this procedure also would be helpful to FWPCA when judging State standards and to the States in developing their capabilities. Also, it was said that some States have indicated that the data to be collected in the Federal survey wouldn't be of much use to them.

Mr. Moore said that he has met with 35 or 40 of the State agencies and found a wide variation in their statutes, procedures, and capabilities. In view of this situation, there is a real question whether or not the States can develop a uniform reporting base. Many States are collecting data, but because of differences in what is happening in each State, there is a wide variation in the type of data available. Adequate and accurate data are vital to the development of standards, and in some cases State data have been questioned as to accuracy. Also, some of the larger companies would have to make separate reports to many States in lieu of one report to FWPCA from the central office. However, FWPCA said that they have not done all they can to make full use of the State agencies, and they plan to work closer with the States and use their capabilities wherever feasible, working through FWPCA regional offices.

Representatives of several industries stated that their trade associations have made or are making similar surveys. Generally, these organizations got good cooperation because they pledged confidentiality. For this reason, they would not be able to turn company data over to FWPCA, but they would be willing to discuss with them their procedures and the problems encountered. They are afraid that response to the proposed form will not be adequate to summarize. FWPCA said that they had looked into the possibility of using trade association data, but found that they lacked adequate comparability.

A major topic of discussion was the matter of confidentiality. As now proposed, response to the survey is voluntary, but there is no promise that the data will be treated as confidential. Under these circumstances, industry believes that response will be limited and the data therefore misleading. It is their opinion that there is little need for disclosure of data except between the FWPCA and State water pollution control agencies. Furthermore, data supplied on a voluntary basis should not serve as a basis for legal action against any plant.

Industry does not like to report effluents without some indication of the effect they will have, because the location of the discharge can make a difference. There is always pressure from the public to release Federal data, and the companies are afraid that the data may get into the hands of news media. They feel that industry would have to assume that the data will be used against them and even be used in court. This would force industry to refuse to cooperate. Reference was made to the procedures used by the Public Health Service when collecting air pollution data. It pledges confidentiality except under certain circumstances. FWPCA might follow a similar procedure.

Spokesmen for FWPCA said that they understood industry's concern about confidentiality. It is not intended that the data be used for enforcement against individual companies. However, the data are needed for the official records of enforcement conferences if the actions of the conferences are to be legally sustainable. In 1966 amendments to the FWPC Act require that upon approval of a majority of State and Federal conferees at an enforcement conference, data must be supplied for this purpose. Companies need not report any trade secrets. Water quality is not something that is easily hidden, and if necessary FWPCA could check on the discharges themselves. They agreed to reconsider the confidentiality aspects of the survey.

A representative of the Bureau of the Census briefly described plans for a 1968 survey of water use in manufacturing and mineral industries which will request some information in addition to that obtained in previous surveys of the same type. The census data will be in broader aggregates than in the proposed FWPCA survey and not too relevant to it.

The waste water disposal form was reviewed item by item. FWPCA said that they had tried to make the form as consistent with census concepts as possible. The form calls only for data that may be available and does not require any special studies to provide them. It is their belief that the data are available, although the accuracy may vary from company to company. If a plant is discharging into a sewer, it is not necessary to report the information in sections III and IV unless the company prefers to do so.

Questions were raised as to the need for data on number of employees and production. Industry generally considers such information confidential, particularly if it is to be requested for more than 1 year. Also, they claim it is hard to interpret because of variations in operations between companies and plants. These data are used to project the magnitude of pollution based on the relationship of pollution to employment and output. It was recommended that check boxes be provided for various ranges of number of employees.

In connection with item 9a of section II, it was pointed out that there may be charges other than service charges. For item 10 it was suggested that temperatures be obtained both upstream and downstream to adequately judge the effect of the discharge. Some reference to B.t.u.'s might be helpful. Also there is need for some indication of the time period to which the data relate.

A number of questions were raised about section III. FWPCA explained that item 11 requests data back to 1948 because this period generally covers the life of a plant and because that was the year of the first Federal pollution control law. One industry representative said that he doubted whether this section would be completed by many companies. For his industry, however, this information can be obtained from a trade association. Some felt that answers to item 12 would not be very meaningful because of the variations between industries and even between plants. Furthermore, book accounts usually do not record this information separately. Consequently, there is need for better instructions. It was suggested that FWPCA check with individual industries about this item. Some were critical of item 13 for covering too long a period. FWPCA pointed out that the law calls for data for this period. One suggestion was that the data be requested for 5 years but not by years. FWPCA again said that companies need report only data that are available.

At the end of the meeting panel members on invitation summarized their views and spokesmen for Interior indicated their desire to review their plans carefully in the light of the discussion.

The meeting adjourned at 1:35 p.m.

Certification: I certify that these minutes are correct:

EDWARD T. CROWDER,
Office of Statistical Standards,
Bureau of the Budget.

ADVISORY COUNCIL ON FEDERAL REPORTS,
Washington, D.C., May 22, 1964.

Subject: Industry—Budget Bureau advisory meeting on proposed U.S. Public Health Service Survey of Industrial Waste Water Disposal.

Attention: The Advisory Council has just received the attached letter from the U.S. Budget Bureau. Therefore, a meeting will be held as follows: Tuesday, June 9, 1964, 9:30 A.M. Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, D.C.

In view of the wide interest in the pollution control problem, this letter is being sent to about 40 trade association executives, several company officials and, of course, ACFR committee chairmen known to be concerned. While it is appropriate to inform so many, the number attending the advisory meeting on June 9 must be limited for practical purposes. Included in this mailing are the associations on the roster of the National Technical Task Committee on Industrial Wastes which were consulted by the Public Health Service last summer.

Enclosed is a copy of the proposed questionnaire and supporting statement. These are the papers that will be discussed on June 9.

Please try to let me know by June 1 if you wish to attend or be represented at the June 9 meeting. I call attention to the Budget Bureau's desire to have the meeting attended primarily by company officials as the purpose of the meeting will be to identify and seek solutions to reporting problems. Let me have the name(s) of those who you wish to attend in order that the Council and Budget Bureau may select and notify a representative panel.

Sincerely yours,

RUSSELL SCHNEIDER,
Executive Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., May 22, 1964.

Mr. RUSSELL SCHNEIDER,
Executive Secretary, Advisory Council on Federal Reports,
1001 Connecticut Avenue NW., Washington, D.C.

DEAR MR. SCHNEIDER: The Bureau of the Budget has been requested by the U.S. Public Health Service to approve, under the Federal Reports Act of 1942, a survey of industrial waste water disposal for the purpose of compiling a nationwide inventory of industrial waste treatment practices.

Please note that in the "Supporting Statement for the Clearance of Report of Industrial Waste Water Disposal" prepared by the U.S. Public Health Service and transferred to you on May 19, the point is made that a considerable number of trade associations, when advised of the Government's interest in compiling an inventory of industrial waste practices, offered their cooperation but could not speak for their individual member companies nor commit the companies to divulge waste discharge data.

In view of this it becomes particularly important that, at the meeting you request of the Bureau of the Budget to afford industry an opportunity to comment on the U.S. Public Health Service proposal, a preponderance of industry representation be chosen from actual respondents to be covered in the survey. As customary we should like to obtain, through the Advisory Council on Federal Reports, industry comments on the reporting burden and related technical aspects of the proposed survey. We should like to have the meeting scheduled for June 9.

Sincerely yours,

ALEXANDER GALL,
Office of Statistical Standards.

SUPPORTING STATEMENT FOR THE CLEARANCE OF REPORT OF INDUSTRIAL WASTE WATER DISPOSAL

A. JUSTIFICATION OF FORM IN ITS RELATION TO OPERATING PROGRAM

The request for clearance of this form is a result of an investigation into the problems of water pollution in this country by the Natural Resources and Power Subcommittee of the House Committee on Government Operations, Congressman Robert E. Jones, chairman.

Hearings were begun by the subcommittee in May 1963, and are continuing up to the present time. One of the witnesses from the Public Health Service presented testimony regarding a provision in Public Law 660, the Federal Water Pollution Control Act, covering the collection and dissemination of basic data pertinent to water pollution control. He stated that information concerning municipal waste treatment facilities is obtained on a routine basis from the State water pollution control agencies, but pointed out that information about the discharge of industrial waste to the Nation's waters has been difficult and in many cases impossible to obtain. As a result of the sparse information on the extent of pollution from industrial waste, any attempt to evaluate the overall water pollution situation in the United States is, at best, very unsatisfactory.

Subsequent testimony from representatives of a number of industrial trade associations on June 4 and 5, 1963, revealed that many industries would cooperate with the Department of Health, Education, and Welfare in compiling an inventory of industrial waste treatment practices and discharge points. In a letter to the Secretary of Health, Education, and Welfare, Congressman Jones requested that the Department initiate conversations with these industries for the purpose of making cooperative arrangements to compile such inventories.

A letter was sent to those trade associations which were represented at the hearings, asking that their member companies be advised of Congressman Jones' interest and requesting their cooperation. A similar invitation to cooperate in compiling an inventory of waste treatment practices was extended also to the 30 trade associations comprising the membership of the National Technical Task Committee on Industrial Wastes.

Responses from the trade associations indicated a willingness to advise all of the member companies of the committee's interest, and in general offered their cooperation insofar as they were able. It was recognized that the trade associations could not speak for their individual member companies or commit them to divulge industrial waste discharge data. Several meetings were held between trade association representatives and representatives of the Division of Water Supply and Pollution Control to discuss the implications of a national inventory of industrial waste practices.

B. JUSTIFICATION OF METHOD USED FOR CONTACTING INDUSTRY

The proposed method of securing the required information is as follows: The Public Health Service would operate in its usual manner through each State water pollution control agency; this inventory would thus become an integral part of the State water pollution control operation.

Copies of the form would be sent to each State agency with the request that where the State itself did not have all information needed, the forms be mailed by the State to each industrial plant discharging wastes to surface waters. The plant would be requested to complete the form and mail it back to the State agency. At that point, the State agency would add any supplementing information from its own files to that provided by the plant, and make any statements it found possible about the adequacy of treatment provided. After all forms had been received, the State agency would forward them to the Public Health Service for processing and preparation of summary evaluations.

Information requested on the form would be provided by each industrial plant. Volumes of flow and analyses of wastes requested would be secured by the plant if not already available from its files. The degree of completeness of this industrial waste inventory would depend largely on what information is available in the State files and on the willingness of each plant to acquire and furnish missing information. The form was drawn up after careful discussion in division headquarters in Washington and with the nine Public Health Service regional offices.

C. DESCRIPTION OF PLANS FOR COLLECTION, TABULATION, AND PUBLICATION

It is believed that the actual collection of the data for this inventory would require from 12 to 18 months after the activity had received formal clearance. During this time the following steps would be taken:

(1) Mailing of the forms to each State agency;

(2) Remailing by the agency to each industrial plant for which the State does not already have full information;

(3) Completion of the form and return to the State by the plant, including making of the necessary quality measurements;

(4) Follow up, including field visits, by State personnel where there is indication that the mail questionnaire approach needs supplementary attention;

(5) Review and individual comment by each State agency;

(6) Return of forms by the States to the PHS regional offices for field review; and

(7) Forwarding to Washington headquarters for processing.

Individual selective printouts and analyses of the data will be provided to organizational elements within the Division of Water Supply and Pollution Control as necessary and to other agencies for program operational purposes in connection with comprehensive projects for water resource planning, technical assistance, and enforcement activities.

D. DOCUMENTATION OF CONSULTATION WITH OTHERS INVOLVED

Preparations for implementing the industrial waste inventory included the design of a sample form which was sent to the Public Health Service regional offices and the State water pollution control agencies for their comments on content and format. Suggestions for modifications were incorporated in a revised form (the form now submitted for clearance) and that form was sent to each State water pollution control agency for discussion purposes. Each State agency was asked to comment on the final format and to express its willingness and capability to administer the inventory in the manner described in paragraph B above. A summary of State acceptance shows that 41 States expressed a willingness to cooperate, including 32 States who indicated a desire to modify the form further in various minor ways. Eight States indicated that they were unable to cooperate extensively because of limitations of State budgets or personnel. No response was received from one State (Hawaii). Some of the 41 willing States indicated a need for direct assistance from the Public Health Service in the form of assigned personnel to enable them to assume these additional tasks. Some States agreed to make limited followups by mail; several felt they would want to send their own personnel out to assist industrial plant managers acquire the necessary facts.

EXECUTIVE OFFICE OF THE PRESIDENT—OFFICE OF MANAGEMENT AND BUDGET

UTILIZATION OF ADVISORY COMMITTEE—FISCAL YEAR 1970

Executive Order No. 11007, section 10(a), provides that "each department and agency utilizing advisory committees shall publish in its annual report, or otherwise publish annually, a list of such committees, including the names and affiliations of their members, a description of the function of each committee and a statement of the dates of its meetings." The Office of Management and Budget does not publish an annual report, and the following information is provided relating to the utilization of advisory committees in lieu thereof. The period covered is July 1, 1969, to June 30, 1970.

COMMITTEES AND SUBCOMMITTEES

Name of committee or subcommittee:

American Statistical Association Advisory Committee on Statistical Policy.

Names and affiliations of members:

Ralph J. Watkins, Survey and Research Corp. (chairman).
Leonall C. Anderson, Federal Reserve Bank of St. Louis.
T. A. Bancroft, Iowa State University.
Daniel H. Brill, Commercial Credit Corp.
Jerome Cornfield, Federation of American Societies for Experimental Biology.
John K. Folger, Tennessee Commission on Higher Education.
Martin R. Gainsbrugh, National Industrial Conference Board.
Douglas Greenwald, McGraw-Hill Publications.
Morris H. Hansen, Westat Research, Inc.
Philip M. Hauser, University of Chicago.
Isador Lubin, Twentieth Century Fund.
Almarin Phillips, University of Pennsylvania.
Richard Ruggles, Yale University.
Eleanor B. Sheldon, Russell Sage Foundation.
Willard L. Thorp, Amherst College.

Function:

To advise the Office of Management and Budget, and through it the Federal statistical system, on broad matters of public policy in the statistical area.

Dates of meetings: October 1969.

Name of committee or subcommittee: Labor Advisory Committee on Statistics.

Names and affiliations of members:

Mr. Rudolph A. Oswald, AFL–CIO (chairman).
Mr. Otis Brubaker, United Steelworkers of America.
Mr. George Cucich, Railway Employees' Department, AFL–CIO.
Mr. Donald D. Danielson, United Brotherhood of Carpenters and Joiners of America.
Mr. Ronny G. Fisher, United Rubber, Cork, Linoleum and Plastic Workers of America.
Mr. Walter O. Froh, United Federation of Postal Clerks.
Mr. Nat Goldfinger, AFL–CIO.
Mr. Reese Hammond, International Union of Operating Engineers.
Mr. Thomas Hannigan, International Brotherhood of Electrical Workers.
Mr. Vernon Jirikowic, International Association of Machinists.
Mr. Lawrence Kenney, Washington State Labor Council.
Mr. Stephen Koczak, American Federation of Government Employees.
Mr. William O. Kuhl, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers.
Mr. Joseph Madison, Transport Workers Union of America.
Miss Vera Miller, Amalgamated Clothing Workers of America.
Mr. Abraham Morganstern, International Union of Electrical, Radio & Machine Workers.
Mr. George Perkel, Textile Workers Union of America.
Mr. Ralph D. Scott, International Printing Pressmen & Assistants' Union of North America.
Mr. Boris Shishkin, AFL–CIO Housing Committee.
Mr. Eugene Spector, National Maritime Union of America.
Mr. Chic St. Croix, Oil, Chemical & Atomic Workers International Union.
Mr. Lazare Teper, International Ladies' Garment Workers' Union.
Mr. Donald S. Wasserman, American Federation of State, County & Municipal Employees.

Function:

To advise the Office of Management and Budget on the Federal statistical program by appraising the collection and analysis of statistical data by governmental agencies and identifying deficiencies in the statistical program.

Dates of meetings: May 1970.

Name of committee or subcommittee: Advisory Council on Federal Reports

Names and affiliations of members:

Charles W. Stewart, Machinery & Allied Products Institute (Chairman)
Leo V. Bodine, National Association of Manufacturers
T. M. Brennan, Brennan & Vallone
Burton N. Behling, Association of American Railroads
A. Arthur Charous, Sears, Roebuck & Co.
Walter Couper, Federated Department Stores, Inc.
William E. Dunn, Associated General Contractors of America
James G. Ellis, Automobile Manufacturers Association
William H. Finigan, the National Cash Register Co.
E. W. Gaynor, Chrysler Corp.
Benjamin F. Holcomb, United States Steel Corp.
Wayne E. Kuhn, Omark Industries, Inc.
John E. Lewis, National Small Business Association.
Carl H. Madden, Chamber of Commerce of the United States.
Joseph F. Miller, National Electrical Manufacturers Assocition.
Robert H. North, International Association of Ice Cream Manufacturers.

Daniel W. Potter, Raymond Engineering, Inc.
Robert S. Quig, Ebasco Servces Inc.
James J. Rutherford, Giffen Industries, Inc.
William H. Shaw, E. I. du Pont de Nemours and Company, Inc.
James W. Shields, Judd and Detweiler, Inc.
Robert H. Stewart, Jr., Gulf Oil Corporation.
T. E. Veltfort, Copper & Brass Fabricators Council, Inc.
Vincent T. Wasilewski, National Association of Broadcasters.
N. R. Wenrich, Merck & Company, Inc.
Donald F. White, American Retail Federation.

Function:

To advise the Office of Management and Budget on simplifying and improving Federal questionnaires, reporting, recordkeeping requirements and statistical programs; and to organize committees and panels for utilization by the Office as may be requested.

Dates of meetings:

October 22, 1969.
May 14, 1970.

Name of committee or subcommittee: Committee on Air Transportation.

Names and affiliations of members:

John A. Paine, Pan American World Airways, Inc. (Chairman).
G. R. Harms, United Air Lines, Inc.
George James, Air Transport Association of America.
Walter F. Johnston, Airport Mail Facility.
Lionel M. Rogers, American Airlines, Inc.
Walter J. Short, Allegheny Airlines, Inc.
Harry B. Sheftel, Office of Management and Budget.

Function:

To advise the Office of Management and Budget with regard to opportunities for paperwork reduction in reporting and recordkeeping requirements of Federal agencies and on any opportunities to effect improvements in the accuracy and usefulness of Federal statistics.

Dates of meetings: No meetings were held in fiscal year 1970.

Name of committee or subcommittee: Committee on Banking.
Names and affiliations of members:

Thomas R. Atkinson, the American Bankers Association.
C.H. Baumhefner, Bank of America.
Frank Forester, Jr., Morgan Guaranty Trust Co.
Denton A. Fuller, Liberty Trust Co.
Franklin A. Gibbons, Jr., the Riggs National Bank.
William T. Heffelfinger, American Bankers Association.
David T. Hulett, Office of Management & Budget.
Saul B. Klaman, National Association of Mutual Savings Banks.
Wesley Lindlow, Irving Trust Co.
Arthur Ringler, Chemical Bank New York Trust Co.
Edward T. Shipley, Wachovia Bank & Trust Co.
Paul L. Smith, Security First National Bank.
Walter F. Thomas, Manufacturers Hanover Trust Co.

Function:

To advise the Office of Management and Budget on Federal reporting and record retention requirements for the purpose of reducing the burden imposed upon the banking industry and to improve statistical and other information to be collected by Federal agencies.

Dates of meetings: October 9, 1969.

Name of committee or subcommittee: Committee on Chemicals.

Names and affiliations of members:

N. R. Wenrich, Merck & Co., Inc. (chairman).
Marjorie V. Campbell, Manufacturing Chemists' Association.
Dr. Jack D. Early, Monsanto Co.
George K. Graeber, Union Carbide Corp.
Dr. Aimison Jonnard, Esso Chemical Co., Inc.
Harold T. Lingard, Office of Management & Budget.
Lewis E. Lloyd, the Dow Chemical Co.
John J. O'Donnell, Allied Chemical Corp.
H. W. Powers, American Cyanamid Co.
Dr. S. C. Turnbull, Jr., E. I. du Pont de Nemours & Co., Inc.
Edgar H. Vant, Jr., Celanese Chemical Co.

Function:

To advise the Office of Management and Budget in regard to opportunities to reduce the paperwork burden on industry resulting from the reporting and record keeping requirements of the Federal agencies, and to make recommendations to improve the accuracy and usefulness of Federal statistics.

Dates of meetings: April 20, 1970.

Name of committee or subcommittee: Committee on Communications Industry.

Names and affiliations of members:

Frank U. Fletcher, Fletcher, Heald, Rowell, Kenehan & Hildreth (Chairman).
Arthur W. Arundel, WAVA.
Joseph E. Baudino, Westinghouse Broadcasting Co., Inc.
Alfred Beckman, American Broadcasting Co.
Wally Briscoe, National Cable Television Association, Inc.
Robert Cochrane, TV Station WMAR–TV.
Harold J. Cohen, American Telephone & Telegraph Co.
Joseph DeFranco, Columbia Broadcasting System.
George J. Gray, AVCO Broadcasting Corp.
Bruce E. Lovett, American Televion & Communications Corp.
Howard Monderer, National Broadcasting Co.
Roger Neuhoff, Eastern Broadcasting Corp.
Roger B. Read, Taft Broadcasting Co.
Harry B. Sheftel, Office of Management and Budget.
John Summers, National Association of Broadcasters.

Function:

To advise the Office of Management and Budget on reporting procedures, mainly Federal Communications Commission questionnaires, directed to the communications industry including radio and television stations and cable television companies, and to make recommendations towards the simplification, consolidation and improvement of such reporting.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Equal Employment Opportunity Surveys.

Names and affiliations of members:

W. L. Barnes, North American Aviation, Inc.
Joseph E. Baudino, Westinghouse Broadcasting Co.
Harry S. Benjamin, Jr., General Motors Corp.
Charles G. Caffrey, American Textile Manufacturing Institute.
David D. Doughty, Air Transport Association.
Paul M. Haskins, Health Insurance Association of America.
W. R. Hill, Jr., Public Service Electric & Gas Co.
Arthur F. Hintze, Associated General Contractors.
Alfred E. Langenbach, First National Bank of Chicago.
Roye L. Lowry, Office of Management and Budget.
S. W. Mahon, Westinghouse Electric Corp.
Donn R. Marston, Machinery & Allied Products Institute.
Lambert H. Miller, National Association of Manufacturers.

Charles F. Mulligan, Eastman Kodak Co.
Eugene F. Rowan, J. C. Penney Company, Inc.
Melvin Sandler, American Hotel & Motel Association.
S. W. Seeman, Penn Central Co.
Mrs. Jean Sisco, Woodward & Lothrop.
Robert H. Stewart, Jr., Gulf Oil Corp.
N. R. Wenrich, Merck & Company, Inc.
Don White, American Retail Federation.

Function:

To advise the Office of Management and Budget on problems which will arise in connection with equal employment opportunity reporting and record keeping requirements and special surveys, and to make recommendations as to ways of avoiding or minimizing such problems.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Fats and Oils.

Names and affiliations of members:

T. J. Totushek, Cargill, Inc. (Chairman).
Charles R. Bergstrom, Anderson, Clayton & Co., Inc.
Arval L. Erikson, Oscar Mayer & Co.
Herbert Harris, National By-Products, Inc.
Martin Hilby, Riverside Industries.
C. H. Keirstead, The Glidden Co.
Harold V. Knight, Lever Brothers Co.
Harry H. Kriegel, J. Howard Smith, Inc.
Harold T. Lingard, Office of Management and Budget.
R. E. Miller, Procter and Gamble Co.
J. W. Moore, A. E. Staley Manufacturing Co.
Malcolm R. Stephens, Institute of Shortening & Edible Oils, Inc.
Boardman Veazie, Swift and Co.
Donald B. Walker, Ralston-Purina.

Function:

To advise the Office of Management and Budget concerning opportunities to reduce the paperwork burden imposed upon establishments engaged in the production, processing and consumption of oils, and

To advise the Office on ways to improve Federal statistical programs to better serve the needs of Government and industry users of Federal statistics.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Industrial Classification.

Names and affiliations of members:

Richard R. McNabb, Machinery & Allied Products Institute (chairman).
John Aiken, Federal Statistics Users' Conference.
Burton N. Behling, Association of American Railroads.
Edward Bloom, Sun Oil Co.
A. Arthur Charous, Sears, Roebuck & Co.
Robert T. DeVany, National Industrial Council.
Robert Eggert, RCA Corp
William H. Finigan, the National Cash Register Co.
Martin Gainsbrugh, National Industrial Conference Board.
B. F. Holcomb, United States Steel Corp.
Paul F. Krueger, Office of Management & Budget.
Carl H. Madden, Chamber of Commerce of the United States.
Albert G. Matamoros, Armstrong Cork Co.
A. J. Nesti, National Electrical Manufacturers Association.
Milo O. Peterson, Office of Management & Budget.
Arthur Schmuhl, Associated General Contractors of America.

Function:

To advise the Office of Management and Budget and the Technical Committee on Industrial Classification on matters relating to the review of the Standard Industrial Classification.

Dates of meetings: June 9, 1970.

Name of committee or subcommittee: Committee on Meat Packing.

Names and affiliations of members:

A. C. Bruner, East Tennessee Packing Co.
Howard Dexter, the Rath Packing Co.
Earl R. Frank, the E. Kahn's Sons Co.
E. A. Holloway, Cudahy Co.
Robert B. Hunter, Tobin Packing Co., Inc.
J. Russell Ives, American Meat Institute.
J. W. Kelly, Armour & Co.
J. B. Kilgore, Wilson & Co., Inc.
L. J. Kurkowski, John Morrell & Co.
L. Blaine Liljenquist, Western States Meat Packers Association.
Harold T. Lingard, Office of Management and Budget.
John Mohay, the National Independent Meat Packers Association.
Leonard H. Pedersen, Oscar Mayer & Co., Inc.
Robert F. Potach, George A. Hormel & Co.
James W. Seifert, the Wm. Schluderberg-T. J. Kurdle Co.
Jack B. Sullivan, Stark Wetzel & Co., Inc.
W. G. Torrace, Hygrade Food Products Corp.

Function:

To advise the Office of Management and Budget on reporting, statistical, and recordkeeping problems arising from the requirements which Federal agencies propose for issuance to the meatpacking industry, and to assist the Office in developing needed statistical programs relating to the industry.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Natural Gas Pipelines.

Names and affiliations of members:

E. H. Hasenberg, Natural Gas Pipeline Co. of America (chairman).
W. Page Anderson, Panhandle Eastern Pipe Line Co.
Daniel L. Bell, Jr., Columbia Gas System Service Corp.
I. D. Bufkin, Texas Eastern Transmission Corp.
Robert L. Cramer, Florida Gas Transmission Co.
J. D. McCarty, United Gas Pipe Line Co.
Harry A. Offutt, Consolidated Gas Supply Corp.
C. W. Radda, Northern Natural Gas Co.
Walter E. Rogers, Independent Natural Gas Association of America.
Harry B. Sheftel, Office of Management and Budget.
Robert H. Stewart, Jr., Gulf Oil Corp.
Lloyd M. Varenkamp, El Paso Natural Gas Co.

Function:

To advise the Office of Management and Budget on report forms and related recordkeeping requirements issued by Federal agencies to companies in the natural gas pipeline field in order to improve such forms and to make recommendations to simplify reporting requirements and reduce the burden of reporting.

Dates of meetings

December 4, 1969.
December 18, 1969.
January 6, 1970.
February 2, 1970.
February 14, 1970.

Name of committee or subcommittee:

Committee on Petroleum and Natural Gas.

Names and affiliations of members

Robert H. Stewart, Jr., Gulf Oil Corp. (chairman).
A. J. Bradford, Texaco, Inc.

C. J. Carlton, Standard Oil Co. of California.
James S. Cross, Sun Oil Co.
E. Wilson Fry, Atlantic Richfield.
E. H. Hanenberg, Natural Gas Pipeline Co. of America.
Edward R. Heydiner, Marathon Oil Co.
John E. Hodges, American Petroleum Institute.
C. B. McGillibray, Mobil Oil Corp.
Harold T. Lingard, Office of Management and Budget.
Melvin L. Mesnard, Independent Petroleum Association of America.
Carl E. Richard, Humble Oil and Refining Co.
Frank Young, Continental Oil Co.

Function:

To advise the Office of Management and Budget on report forms relating to the petroleum and natural gas producing and processing industries; to reduce the burden imposed upon these industries as a result of Federal reporting and recordkeeping requirements; and to advise the Office of Management and Budget in connection with opportunities to improve Federal statistical programs to serve the needs of both government and industry.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Public Utilities—Coordinating Committee.

Names and affiliations of members:

Robert S. Quig, Ebasco Services Inc. (Chairman).
Miles J. Doan, The Cincinnati Gas & Electric Co.
G. H. McDaniel, American Electric Power Service Corp.
Harry B. Sheftel, Office of Management and Budget.
John Thornborrow, Edison Electric Institute.

Function:

To advise the Office of Management and Budget and to coordinate, as may be desirable, the work of the Committees on Financial Reports and Operating Reports to better serve the purposes of the Advisory Council on Federal Reports and the needs of the Office and the gas and electric utilities industries; also to assist in the selection of special advisory panels qualified to advise the Office on any reporting forms and plans concerning which the two committees would not be adequately qualified to advise the Office.

Dates of meetings:

November 19, 1969.
December 5, 1969.

Name of committee or subcommittee: Committee on Public Utilities—Financial Reports.

Names and affiliations of members:

Robert S. Quig, Ebasco Services Inc. (Chairman).
C. M. Allen, Panhandle Eastern Pipeline Co.
A. J. Brodtman, New Orleans Public Service Co.
Miles J. Doan, The Cincinnati Gas & Electric Co.
Robert R. Fortune, Pennsylvania Power & Light Co.
Arthur E. Gartner, Consolidated Natural Gas Co.
John Geiger, Pacific Power & Light Co.
John S. Graves, Columbia Gas System, Inc.
Robert A. Jeremiah, Long Island Lighting Co.
J. C. Johnson, Southern Services, Inc.
Albert J. Klemmer, Rochester Gas & Electric Co.
Frank H. Roberts, Northern Natural Gas Co.
William E. Sauer, Peoples Gas Light & Coke Co.
Harry B. Sheftel, Office of Management and Budget.
Alfred E. Softy, Edison Electric Institute.
William T. Sperry, Public Service Gas & Electric Co.
Douglas M. Tonge, American Electric Power Service Corp.

Function:

To advise the Office of Management and Budget on financial reporting forms and related requirements issued by Federal agencies to companies in gas and electric utilities field in order to improve such reporting forms and plans and where possible to simplify them and reduce the burden of reporting.

Dates of meetings:

November 19, 1969.
December 5, 1969.

Names of committee or subcommittee: Committee on Public Utilities—Operating Reports.

Names and affiliations of members:

Robert S. Quig, Ebasco Services Inc. (Chairman).
Fred W. Braga, The Detroit Edison Co.
Theodore I. Gradin, American Gas Association.
G. H. McDaniel, American Electric Power Service Corp.
James I. Poole, Jr., Natural Gas Pipeline Co. of America.
Francis Quinn, Transcontinental Gas Pipe Line Corp.
Donald E. Rose, New England Power Service Co.
Harry B. Sheftel, Office of Management and Budget.
John Thornborrow, Edison Electric Institute.
E. A. Willson, Northern States Power Co.
R. C. Wilson, Washington Gas Light Co.

Function:

To advise the Office of Management and Budget on utilities operating reporting forms and related requirements issued by Federal agencies to companies in gas and electric utilities field in order to improve such reporting forms and plans and where possible to simplify them and reduce the burden of reporting.

Dates of meetings:

November 19, 1969.
December 5, 1969.

Name of committee or subcommittee: Committee on Railroads.

Names and affiliation of members:

Burton N. Behling, Association of American Railroads (chairman).
L. W. Adkins, Louisville & Nashville Railroad.
P. L. Conway, Jr., Association of American Railroads.
W. R. Divine, Southern Railway System.
W. N. Ernzen, Chicago, Burlington & Quincy Railroad.
J. T. Ford, Jr., Chesapeake & Ohio/Baltimore & Ohio Railroads.
C. E. Fuller, Genesee & Wyoming Railroad Co.
Charles S. Hill, Penn Central Co.
H. A. Nelson, Southern Pacific Co.
Harry B. Sheftel, Office of Management and Budget.

Function:

To advise the Office of Management and Budget with respect to Federal reporting and recordkeeping requirements applicable to railroads and subject to review by the Office under the Federal Reports Act, and to such related problems of coordination and planning of statistical and reporting programs covering railroads as the Office may refer to the committee.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Retail Trade

Names and affiliations of members

Eugene A. Keeney, American Retail Federation (chairman).
A. Arthur Charous, Sears, Roebuck and Co.
S. Kent Christensen, National Association of Food Chains.
Don J. Debolt, Menswear Retailers of America.

Nathan B. Epstein, Lerner Stores Corp.
William Girdner, Melville Shoe Corp.
Elias S. Gottlieb, R. H. Macy & Co., Inc.
Robert C. Heller, F. W. Woolworth Co.
Thomas H. Jenkins, National Retail Hardware Association.
Paul F. Krueger, Office of Management and Budget.
Alfred E. Kuerst, L. S. Ayres & Co.
Herbert S. Landsman, Federated Department Stores, Inc.
Eleanor G. May, Woodward and Lothrop.
Irving Phillip, National Retail Merchants Association.

Function

To advise the Office of Management and Budget with respect to Federal reporting and recordkeeping requirements applicable to the retail trades and subject to review by the Office under the Federal Report Act, and to such related problems of coordination and planning of statistical and reportng programs covering the trades as the Office may refer to the committee.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Scientific and Research Activities

Names and affiliations of members

John W. Reynard, E. I. du Pont de Nemours & Co., Inc. (chairman).
C. A. Church, General Electric Co.
C. C. Coyne, Gulf Research & Development Corp.
R. C. Cunningham, Westinghouse Electric Corp.
Virginia A. Dwyer, Western Electric Co.
N. O. Heyer, International Business Machines Corp.
B. F. Holcomb, United States Steel Corp.
Wayne E. Kuhn, Omark Industries, Inc.
Margaret E. Martin, Office of Management and Budget.
George E. Norman, Jr., Burlington Industries, Inc.
David Novick, The Rand Corp.
John H. Pond, Martin Marietta Corp.
Harry B. Sheftel, Office of Management and Budget.
Robert M. Smith, General Motors Corp.
Robert H. Sommer, National Assn. of Accountants.
G. N. Virgil, North American Rockwell Corp.
N. R. Wenrich, Merck & Company, Inc.

Function:

To advise the Office of Management and Budget on the improvement and simplification of Federal Government reporting forms and related procedures concerned with scientific and technical personnel and research and development expenditures in industry, and to advise the Office as to statistical programing in these fields, with particular reference to industry needs for statistical information.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: Committee on Wholesale Trades.

Names and affiliations of members:

James E. Allen, The Henry B. Gilpin Co. (Chairman).
Gilbert Campbell, Albemarle Motor Co.
Paul L. Courtney, National Assn. of Wholesalers.
W. D. Jenkins, Radio Supply Co.
Frank J. Mulvey, National Auto Service Co., Inc.
Hugh N. Phillips, Frank Parsons Paper Co.
Harold O. Smith, Jr., U.S. Wholesale Grocers Association.

Function:

To advise the Office of Management and Budget on reporting, recordkeeping and statistical problems arising from the activities and recommendations of

Federal agencies relating to wholesale industries, to reduce the burden of paperwork imposed upon the wholesale industries by these requirements, and to make recommendations for the improvement of Federal statistics needed by Government and industry.

Dates of meetings: None in fiscal year 1970.

Name of committee or subcommittee: **President's Advisory Council on Management Improvement.**

Names and Affiliations of members:

General Bernard A. Schriever, U.S .Air Force (retired), Schriever & McKee Associates, Inc.
Dwayne O. Andreas, First Interoceanic Corp.
Wayne M. Hoffman, the Flying Tiger Line, Inc.
Gail M. Melick, Continental Illinois National Bank.
Allen W. Merrell, Ford Motor Co.
Rufus E. Miles, Jr., Population Reference Bureau.
John W. Rollins, Sr., Rollins International, Inc.
Thomas A. Staudt, General Motors Corp.
Wayne E. Thompson, Dayton-Hudson Corp.
Charles J. Wyly, Jr., University Computing Co.

Function:

To advise the Office of Management and Budget on ways in which to improve management and efficiency in Government and to provide for an interchange of ideas with private industry on applying effective management techniques to Government operations.

Dates of meetings:

March 13–14, 1970.
May 8–9, 1970.

[From Science magazine, July 3, 1970, pp. 36–39]

Budget Bureau: Do Advisory Panels Have an Industry Bias?

(By Vic Reinemer)

> *Editor's note:* Vic Reinemer, author of this article on certain little-known but apparently influential advisory committees to the Federal Bureau of the Budget, serves as executive secretary on the staff of Senator Lee Metcalf (D-Mont.). Both he and Metcalf believe the shadowy committees have neglected the public good to benefit business and industry. Metcalf has even suggested that the committees might best be abolished. A contrary view of the committees' value is presented on page 39 in a brief rebuttal by Robert P. Mayo, Director of the Bureau of the Budget, which has recently been reorganized as the Office of Management and Budget. Reinemer, a Senate staffer since 1955, has served as associate editor of the Charlotte (N.C.) News and has had articles published in several national magazines. Reinemer and Metcalf coauthored Overcharge, a critical examination of utility regulation (reviewed in the 10 February 1967 issue of Science).

Early in World War II, many small businessmen appealed to the chairman of the Special Senate Committee to Study Problems of American Small Business. The Government, they complained, was sending them too many questionnaires. The chairman introduced a bill, which became the Federal Reports Act of 1942, specifying that information needed by Federal agencies would be obtained with a minimum burden upon business, especially small business. The law also empowered the Director of the Bureau of the Budget to coordinate the collection of information from ten or more business firms or persons.

The Budget Director asked some of his big-business friends to help him administer the new law. They formed the Advisory Council on Federal Reports. They asked some of their industry friends to help them help the Budget director. Soon they had formed 16 Budget Bureau advisory committees, dealing with banking, broadcasting, chemicals, equal employment, fats and oils, meat packing, natural gas, oil, railroads, trade, and utilities. The cost of the council and its 16 committees is borne entirely by industry. The council terms itself the "official business consultant to the Federal Bureau of the Budget" yet notes that it is "appointed by and is responsible only to the business community."

The advisory committees did not represent small businesses, for whom the law was enacted. The law was not violated, however, since the law said nothing about setting up advisory committees.

The law did say that information was to be collected in a way that would maximize its usefulness to the public. But the public was excluded from the committees. Indeed, the public was unaware of the committees' existence. No separate advisory committees were established for environmental, consumer, small business, labor, or other groups.

The advisory committee system, in effect now for 27 years, gives large industries and their trade associations exceptional advantages. The process of disclosing or withholding information goes to the heart of Government decision-making and law enforcement. Members of the committees have a vantage point deep within an extraordinarily powerful agency. They can anticipate and affect government policy. They can better protect their own interests and adversely affect the interests of others. And they do—especially with regard to pollution.

Few people thought or cared much about pollution during the 1950's. In 1960, President Eisenhower vetoed a federal water pollution control bill, terming pollution a "uniquely local blight." Attitudes began to change during the early 1960's.

In June 1964, 17 Federal officials, most of them from the Public Health Service (PHS) or the Budget Bureau, met with a 27-man panel from the Budget Bureau's advisory committees to discuss a proposed federal inventory of water-contaminating industrial waste disposal. The PHS was required by law to collect information, develop comprehensive programs for water pollution abatement, and to initiate regulatory action. Planning and regulation would be difficult if the officials did not know who polluted what, and where. Information on municipal waste disposal had been available for years, but, according to PHS officials, information on industrial waste disposal was inadequate.

All 27 members representing the Budget Bureau's advisory committees at the meeting came from industry—U.S. Steel, Consolidation Coal, American Paper & Pulp, American Electric Power, the American Petroleum Institute, the National Association of Manufacturers (NAM), and others. They objected to the inventory.

The information that the Government proposed to collect, they said, would be incomplete and outdated, misused by politicians and the press. They explained that the NAM was already collecting data on this matter but that some companies had not even responded to the NAM request. Those companies would be even more reluctant to respond to another survey—which would be burdensome and might reveal trade secrets. The electric utility spokesman wondered why his industry (which causes thermal pollution) was even included in the proposed inventory.

After 7 hours, the meeting adjourned and the Budget Bureau pigeonholed the proposed inventory.

BLOCKED AGAIN

The following year, the question of the inventory was raised again, and again it was blocked by industry. At a conference on pollution of Lake Erie and its tributaries, eight major industries said they would provide data on discharged waste water to Federal and State agencies. Acting on this indication of cooperation, Chairman Robert E. Jones (D-Ala.) of the House Subcommittee on Natural Resources and Power urged the Budget director and the new Secretary of Health, Education, and Welfare (HEW) to approve the nationwide inventory. They replied that perhaps a pilot study should be made around Lake Erie; a study was made but produced little information.

The next year (1966) federal responsibility for water pollution abatement was shifted from PHS, in HEW, to the new Federal Water Pollution Control Administration (FWPCA) in the Department of the Interior. The Clean Water Restoration Act approved in 1966 called for comprehensive studies by the Interior Department of the cost of controlling industrial pollution and of possible economic incentives to induce industry to abate pollution. In 1967 the House subcommittee again pressed the Budget Bureau to approve the inventory. But the Bureau recommended delay.

"We believe," wrote the Bureau, "that once data is [*sic*] available from the cost and incentives studies, we will have a much better idea about what types of data are available from industry and how best to structure any potential questionnaire for the industrial inventory." The Bureau did not want to collect information until it had information!

In contrast, the Interior Depatrment held that the egg must come before the chicken—before it could count the cost of industrial pollution it would have to have an inventory.

In the summer of 1968, the Budget Bureau advisory panel again considered the proposed inventory. The 26 advisory participants represented most of the companies and trade associations that had been at the 1964 meeting and included several of the same individuals. None of the 13 federal participants had attended the 1964 meeting. At the meeting, FWPCA officials reported that the need for adequate and accurate data on industrial water pollution was becoming more and more acute at both the State and the Federal levels. The advisory committee members reiterated the argument that they had previously made to other federal officials. After 4 hours of discussion, the meeting adjourned and the Budget Bureau again returned the inventory to the pigeonhole.

And that is where it remains today. The new FWPCA commissioner, David D. Dominick, blames the Budget Bureau for halting the inventory. But he is not pushing it, having retreated to industry's position that the information should be collected at the State level, where it is unlikely ever to be collected. And so the Federal Government marches back down the hill, which is still securely held by industry and its advisory committees.

Air pollution control has also been slowed by a Budget Bureau advisory committee. In March 1968 the National Air Pollution Control Administration (NAPCA) submitted a proposed Air Contaminant Emissions Survey to the Budget Bureau. The advisory committee objected to disclosure of data relating to specific plants and set up a negotiation team, including representatives from the NAM, U.S. Chamber of Commerce, American Paper Institute, American Petroleum Institute, National Coal Association, and Manufacturing Chemists Association. At the industries' urging, NAPCA submitted weaker, general drafts. Last year the survey was finally innocuous enough to obtain industry approval, and the Budget Bureau cleared the form.

Nevertheless, NAPCA asked further restrictions on the use of the information it would collect, according to the Task Force Report on Air Pollution issud late this spring by the Center for Study of Responsive Law (Nader's Raiders). The Chattanooga Manufacturers Association urged its members to withhold information sought through the emissions survey. NAPCA Commissioner John T. Middleton thereupon promised the Chattanooga manufacturers that the data they disclosed would never be made public, even in administrative or judicial proceedings. Government, said the Task Force Report, was indeed a junior partner to industry.

OTHER INFORMATION WITHHELD

Pollution is but one of the areas in which Budget Bureau advisory committees foil collection of information on which enforcement and legislation are based. In 1963 the Federal Trade Commission submitted to the Budget Bureau a questionnaire designed to obtain information on ownership and interlocks of the nation's 1000 leading corporations. The advisory committees strongly objected, then carried their inside information to Capitol Hill, where they obtained prohibition of expenditures on the survey. Electric and gas utilities used the advisory committees to weaken Federal Power Commission (FPC) attempts to obtain more information on utilities' expenditures for professional services, including payment made to law firms, advertising, public relations, and lobbying.

The budget of the advisory committees' parent organization, the Advisory Council on Federal Reports, is approximately $60,000 a year. This cost is borne by the American Society of Association Executives, the National Association of Manufacturers, the U.S. Chamber of Commerce, the American Retail Federation, the Financial Executives Institute, and a few individual companies. Expenses includes a Washington office (1001) Connecticut Avenue, N.W.) and occasional picnics and dinners honoring the Budget Bureau officials who work with the advisers.

Many advisory committee members have served with the same Budget Bureau career officials for years. The Budget Bureau staffers are usually at grade 14 or 15 ($19,643 to $29,752 per year); some junior members may be as low as grade 9 ($9,881 to $12,842 per year). They could be awed by association with prestigious industry officials who serve on the committees—for instance, Robert S. Quig, vice president of Ebasco Services, Inc., a utiilty service organization. Quig has chaired the three electric and gas utility advisory committees for years and also serves on the parent Advisory Council on Federal Reports.

Camaraderie between industry and Government blooms into soft policy. One Budget Bureau official eased industry anxieties by reminding them of the policy on corporate disclosure that he had laid down 7 years earlier:

> When you are in doubt, resolve the doubt to your own advantage. Even when instructions are implicit there are cases where the reporting requirement may not be consistent with the manner in which some of you maintain your records. In that case report the data you have—in most cases it will be acceptable.

Until recently, the advisory council and committees have enjoyed anonymity. A long-standing advisory committee "principle" has prohibited publication of "recommendations which have been made to the Bureau of the Budget but on which action by the Bureau has not yet been taken." Outsiders have thus been prevented from obtaining information until it was too late to act on it. Until a few months ago, the Budget Bureau's limited circulation "yellow sheet"—a daily list of reporting forms and plans received for approval—was marked "Not for Publication." Congressional inquiry as to the reason for confidentiaility prompted removal of the restriction.

Representatives of nonindustry organizations, who only recently have attended advisory committee meetings as observers, have not felt welcome. Last year, when an advisory committee began consideration of FPC forms relating to plant pollution control at steam-electric generating plants, entry was sought by the National Wildlife Federation. It represents the interests of state and local affiliates throughout the country and is deeply interested in water quality standards. Louis S. Clapper, conservation director of the National Wildlife Federation, described the experience of his organization's representative in these words from his 3 December 1969 letter to Budget Director Robert P. Mayo:

> On Nov. 18, 1969, a member of our staff, Gerald W. Winegrad, an attorney, was told by Mr. Harry B. Sheftel of your office that he would have to clear attendance at this Public Utilities Committee meeting with a Mr. Dana Barbour, Acting Director for Clearance Operations of the Bureau of the Budget. Mr. Winegrad on calling Mr. Barbour was advised that "we just can't have any more people," that there was no more seating room. Mr. Winegrad advised him that he would stand during the meeting but was still told he could not attend. Mr. Barbour advised Mr. Winegrad that he would send him a copy of FPC Form 67 in lieu of his attending the meeting. At the meeting which Mr. Winegrad did attend, there were no less than 14 empty chairs in the room at all times.
>
> Mr. Sheftel made a point of stressing to Mr. Winegrad on the phone that "no policy was being considered" and asked: "What is your interest?" and "How did you know of the meeting?"

However, the Budget Bureau's assistant director for statistical policy, Julius Shiskin, says that under recently adopted policies there will be plenty of seats for all interested parties at advisory committee meetings and that "any American including Rap Brown" will be welcome. (Shiskin later said use of this quote by singling out one controversial individual, inaccurately reflected his attitude.)

Revision of the Budget Bureau advisory committee system was suggested last year by Senator Lee Metcalf (D.-Mont.). His bill (S. 3067) would require consumer labor, and small business representation on the committees and "timely, conspicuous public notice" of their meetings. In March Senator Metcalf told the House Government Operations Special Studies Subcommittee that the public interest might best be served by abolition of the committees.

The Budget Bureau opposes the Metcalf bill. Discomfitted by the attention given its advisory committees, the Budget Bureau now emphasizes "the need for agency consultations with user and other interested groups" prior to submittal of agency requests to the Bureau. The disadvantage to the public in that approach is the same as the one it has with the Budget Bureau committees—"user and other interested groups" do not have the entree with agencies that industries have. Edison Electric Institute (EEI), trade association of the investor-owned electric utilities, quietly planned a meeting in March of this year with the FPC staff. The EEI wanted to discuss, privately, the plant pollution control data reports, which had interested the National Wildlife Federation last winter. Only after congressional and press comment on the closed nature of the planned meeting with industry did the FPC invite the outsiders who had sat in on last winter's discussion.

The Budget Bureau has specifically refused to include on its advisory committees representatives of the Consumer Federation of America. Instead, the Bureau has invited Virginia Knauer, special assistant to the President for consumer affairs, to send staff members to some advisory committee meetings. Mrs. Knauer's small staff has neither the expertise nor the zeal to offset the representatives of large industries and their trade associations.

On 9 April, President Nixon announced still another committee through which businessmen can "communicate regularly with the President, the Council on Environmental Quality, and other Government officials and private organizations which are working to improve the quality of the environment." The new committee, the National Industrial Pollution Control Council, is composed of board chairmen or presidents of major oil, automobile, electric utility, mining, timber, coal, airline, and manufacturing companies plus presidents of the U.S. Chamber of Commerce, the National Association of Manufacturers, and the National Industrial Conference Board. (The Administration recently contracted with the National Industrial Conference Board to make a selective study—electric utilities are not to be included—of industrial pollution costs.)

The President's choice for chairman of the council is Bert Cross, board chairman of Minnesota Mining and Manufacturing. His company still has not complied with a 1966 State order in Wisconsin to stop discharging sulfurous waste into municipal sewers.

The Presidential council headed by Cross is composed exclusively of polluters. Informed ecologists, old-fashioned conservationists, vocal students, or silent majorities are not represented, nor do they have separate advisory councils. They are excluded, at the Presidential and the Budget Bureau levels. They can get their information from industries' anti-pollution advertisements. Meanwhile, inside the White House and the red brick Executive Office Building of the Bureau of the Budget, the rabbits guard the wilting lettuce.

—VIC REINEMER.

THE BUDGET DIRECTOR RESPONDS

We appreciate the generous offer to reply to your article on the Bureau of the Budget, but there is so much half-truth carefully interwoven through the article that you leave us with almost no rebuttal except to say the article is unfair and misleading. Furthermore, it is in large part ancient and not very accurate history.

First, here is the situation as it exists today. Meetings with committees and panel of the Advisory Council on Federal Reports are open to all interested parties, without exception. Anyone who wishes to receive advance notice of these meetings may simply request that his name be placed on our mailing list. Write to Office of Statistical Policy, Bureau of the Budget, Federal Office Building No. 7, Washington, D.C. 20503.

The important point your article misses, I feel, is that it is only in the last year or two that the Bureau has been receiving for review an increasing number of forms and reporting requirements involving complex and controversial socio-economic issues, such as consumer protection, pollution, civil rights, equal employment opportunity, and so forth. We were responsive to the need for broadening consultation with groups wishing to present their views.

The Advisory Council on Federal Reports provides a channel through which various segments of the business community advise and consult with the Budget Bureau on reporting problems attendant to requests of government agencies for information from business.

You make the point that small business has not been represented. The National Small Business Association has been a member of the Council for the last 10 or 15 years. Furthermore, the U.S. Chamber of Commerce has been a full-fledged member since the inception of the Advisory Council, and the majority of the Chamber's membership is comprised of small business.

The Bureau, now reorganized as the Office of Management and Budget, is composed of dedicated public servants with a long tradition of dealing fairly with all who are claimants on the national resources. As for the annual banquets, Budget Directors and some of their aides have attended them, as did President Truman and President Johnson. To suggest an official of the Bureau could be corrupted by a meal is surely beneath the dignity of so fine a publication as Science.—Robert P. Mayo, Director, Bureau of the Budget.

APPENDIX 6.—CORPS OF ENGINEERS' NEW POLICY OF FULL ENFORCEMENT OF 1899 REFUSE ACT (33 U.S. CODE 407), AND RELATED CORRESPONDENCE

[Excerpt from the Congressional Record of July 29, 1970]

JULY 28, 1970.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, Department of the Army,
Washington, D.C.

DEAR GENERAL CLARKE: Your letter of June 24, 1970, enclosed at our request data in tabular form on existing permits issued by the Corps of Engineers for industrial waste discharges into navigable waterways since enactment of the 1899 Refuse Act (Table A), and for dredged materials since January 1, 1965 (Table B),[1]

Table A shows that there are no existing Corps permits for industrial wastes in 22 States (Arizona, Colorado, Connecticut, Iowa, Kansas, Maine, Maryland, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Virginia, West Virginia, and Wyoming). In Massachusetts, the only existing Corps permit was suspended on February 13, 1970, because of unspecified complaints by State officials. Except for New Jersey, California, and Louisiana, there are less than 25 existing Corps permits for industrial waste discharges in each of the remaining States and Puerto Rico. The dischargers covered include some of the Nation's producers of pulp and paper, synthetic fibers, chemicals, petroleum products, steel and aluminum.

This meager number of existing Corps permits issued for the discharge of industrial wastes is disgraceful, when one contemplates the numerous industries in each State that undoubtedly discharge pollutants into our waterways. The time has long passed for these industries to stop flouting the 1899 law and to either comply with it and the regulations issued thereunder, or to cease discharging their wastes into our waterways.

As we have said time and time again, the 1899 law affords an opportunity to determine whether these dischargers are, in fact, in compliance with applicable water pollution control laws. Section 21(b) of the Federal Water Pollution Control Act, as amended by Public Law 91-224 of April 3, 1970, and the recently revised Corps regulations (Cong. Rec. (daily issue) pp. H5731–5736, June 17, 1970), require that an applicant for a Corps permit provide the Corps with a State certification. The State must certify "that there is reasonable assurance" that the applicant's activity "will be conducted in a manner which will not violate applicable water quality standards." No Corps permit "shall be granted" until such certification is obtained or waived. Presumably, a State will not issue a certification without careful review of the applicant's activity. But, unless the Corps requires dischargers to comply with the 1899 law, section 21(b) will not become operative.

We therefore urge the Corps to begin now to notify all present and future dischargers of refuse materials into this Nation's waterways about the requirements of the 1899 law and section 21(b) of the FWPC Act. This notification should be done as expeditiously as possible, through the news media, correspondence with various industrial and trade associations, the Chambers of Commerce, the National Association of Manufacturers, and other appropriate means of disseminating this information.

Please advise us when you initiate such notification.

Recently, the following notice was brought to the Subcommittee's attention:

Corps of Engineers, Department of the Army, P.O. Box 1715, Baltimore, Maryland 21202, Telephone 962–4646.

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[1] Tables are available in subcommittee files.

Warning Notice.—Federal Acts Prohibit The Discharge Or Overflow Of Any Oil, Sludge, Bilge Oil, Dirt, Dredgings, Ashes, Cinders, Mud, And Refuge Of Any Kind Into Navigable Waters That Lie Within The Jurisdiction Of The United States.

Violation Of These Regulations May Result In A Penalty Of Not More Than $10,000, Or Not More Than One Year Imprisonment Or Both.

Applicable United States Laws: The Oil Pollution Act of 1924, As Amended, The Act of 29 June 1888, River & Harbor Act of 3 March 1899.

The notice fails to advise the public that, under the 1899 law, one-half of the fine imposed by the court under that law shall "be paid to the person or persons giving information which shall lead to conviction." (33 U.S. Code 411). As the Committee on Government Operations said in its recent report (House Report No. 91–917, March 18, 1970, pp. 17–18):

"The informer payment provides a monetary incentive to citizens to furnish information to the Corps concerning violations of the Refuse Act."

Information supplied by citizens can aid the Corps, not only in the enforcement of the criminal provisions of the Act, but also in obtaining injunctions requiring a violator to cease future discharges or to apply for a Corps permit in the manner mentioned above. Further, such information can be useful to the Corps in requiring the discharger to remove pollutants already discharged. Informing the citizen about this little-used provision of the law will undoubtedly result in greater information being provided to the Corps or the U.S. attorneys and some savings to the Government of the cost of investigations of violations.

We therefore urge the Corps to revise the above notices by adding the following:

"One-Half of the Fine Imposed For Violation of the 1899 Act is Paid To Any Person or Persons Giving Information Leading To Conviction."

Since these notices must be revised anyway because the Oil Pollution Act of 1924 was repealed by section 108 of Public Law 91–224 on April 3, 1970, the addition of this language to the notices should not be too costly to the Corps.

Please advise us when the Corps revises these notices.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

FOR IMMEDIATE RELEASE JULY 30, 1970

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C.

CORPS OF ENGINEERS ANNOUNCES NEW PERMIT REQUIREMENTS

The Corps of Engineers today announced new permit requirements under the Refuse Act (33 U.S.C. 407) concerning all discharges into navigable waters. Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been granted.

Applicants for new permits are now required to identify the character of the effluent and to furnish pertinent data such as chemical content, water temperature differentials, toxins, sewage, quantity of solids involved, and the amount and frequency of discharge.

The corps' revised requirements are in compliance with the Environmental Policy Act of 1969, which requires agencies to consider environmental impact in the administration of public laws, and with the Water Quality Improvement Act of 1970, which requires applicants for Federal permits to file a certification from the appropriate State that the discharge "will not violate applicable water quality standards." Under the revised procedures, the effects of discharges on water quality will be considered in processing the permit.

While permits will be required for all future discharges into navigable waters and their tributaries, the Corps of Engineers will initially concentrate on major sources of industrial pollution not covered by existing permits. The corps hopes that through widespread knowledge of its new permit requirements including

State certification, it will, along with other Federal, State, and local antipollution activities, encourage industries to accelerate their own antipollution efforts.

All actions under the Refuse Act having Water Quality implications are being closely coordinated with the Federal Water Quality Administration to insure unity in the Federal water antipollution program.

U.S. House of Representatives,
Conservation and Natural Resources Subcommittee,
Committee on Government Operations,
Washington, D.C., August 19, 1970.

Lt. Gen. F. J. Clarke,
Chief of Engineers,
Corps of Engineers,
Washington, D.C.

Dear General Clarke: Enclosed for your information is a copy of my statement (Cong. Rec., Aug. 14, 1970, pp. H8362–8366) concerning the Corps of Engineers new policy of full enforcement of the 1899 River and Harbor Act (30 Stat. 1151).

I commend the corps adopting a policy of full enforcement of the law. I hope that it will now follow up on this announcement of July 30, 1970, and adopt my recommendations set forth in my letter of July 28, 1970, to the corps. I also hope that the corps will publicly support current efforts in the Senate to provide funds to implement more fully your new policy.

I am greatly encouraged by this new corps policy. But I want also to caution against any dilution of that policy through the adoption of a memorandum of understanding with FWQA that would give it more than a technical, advisory role in enforcement of the 1899 act. The FWQA should not be asked for recommendations concerning enforcement of the corps' act. Nor should the corps, or the Department of Justice, weaken enforcement of the act on the basis of the relationship of such enforcement to any program or proceeding of FWQA.

We would appreciate receiving a copy of that memorandum for our review before it is adopted and a reply to our letter of May 13, 1970, concerning this subject before the corps agrees to such memorandum of understanding.

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

[Excerpt from Congressional Record of August 14, 1970]

WATER POLLUTION AND THE REFUSE ACT OF 1899: THE CORPS OF ENGINEERS IS DOING ITS DUTY, WHY NOT THE DEPARTMENT OF JUSTICE?

The SPEAKER. Under a previous order to the House, the gentleman from Wisconsin (Mr. Reuss) is recognized for 60 minutes.

Mr. REUSS. Mr. Speaker, I reported to the Members of this House on June 17, 1970, "about the significant step forward" taken by the Corps of Engineers in recently revising its regulations pursuant to the recommendations of the House Committee on Government Operations—House Report No. 91–917, March 17, 1970. These regulations govern, among other works, applications for Corps permits to conduct filling, dredging, and refuse disposal in navigable waterways.

Today, I am again able to report to the Members of the House another progressive step taken by the Corps in announcing a policy of enforcement of the 1899 River and Harbor Act (30 Stat. 1151). Equally, I must point out the total abdication by the Department of Justice of its statutory duty "to vigorously enforce" that act. The Attorney General, whose sworn duty it is to enforce law and order, is a scofflaw where water pollution is concerned.

A review of a tabulation of existing industrial waste permits issued by the Corps since March 3, 1899, which was prepared by the Corps at the request of the Subcommittee on Conservation and Natural Resources, of which I am chairman, showed: First, that there are many industrial polluters in this Nation who are discharging refuse materials into our waterways without a Corps permit and in violation of the 1899 law; and second, that even where a permit exists there appears to be little, if any, treatment of the refuse before it is discharged.

I therefore wrote to the Corps on July 28, 1970, and I urged that it "begin now to notify all present and future discharges of refuse materials into this Nation's waterways about the requirements of the 1899 River and Harbor Act." I informed the House about this on July 29—CONGRESSIONAL RECORD, page H7410.

I am very pleased to report that the Corps on July 30, 1970, has announced a policy of full enforcement of the 1899 law as follows:

"Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been granted."

I commend the Corps for recognizing its responsibility for vigorous enforcement of the Refuse Act. With the adoption of this new policy by the Corps, the polluter will either have to apply for and obtain a permit, or face prosecution under the Refuse Act, or cease discharging its wastes.

No longer will the Nation's polluters be able to gain substantial profits through the use of our public waters as their private sewers. The public's right to clean waters is now recognized by the Corps as superior to the polluter's profits.

With this new policy, the discharger who applies for a Corps permit must also obtain a certification from the State in which the discharge originates, as required under section 21(b) of the Federal Water Pollution Control Act, as amended by Public Law 91-224 enacted April 3, 1970. When a State grants a certificate, after notice and an opportunity for public hearings, it certifies that the applicant's activity "will be conducted in a manner which will not violate" applicable Federal, State, or local water quality standards. Under the Corps recent revised regulations—Circular No. 1145-218, expires June 30, 1971—it will not begin to process a permit application until the certificate is granted.

In addition to the certificate, the Corps recently issued regulations requiring that applicants for dredging, filling, and disposal operations list first, the type and quantity of solids to be removed or deposited; second, the proposed method of measurement; third, alternate methods of disposal; and fourth, the economic and environmental impact of alternate methods. Applicants for permits for outfall sewers from industrial and other plants and similar work "which may affect the ecology of a waterway are required to furnish data to identify the character of the effluent."

In the latter case, the applicant must include "data pertaining to chemical content, water temperature differentials, toxins, sewage, amount and frequency of discharge and the type and quantity of solids involved and provide information on plans to abate pollution of solids." The Corps regulations also encourage the holding of public hearings "whenever there appears to be sufficient public interest."

Finally, the "decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on the public interest," including such factors as navigation, fish and wildlife, water quality, economics, conservation, esthetics, recreation, water supply, flood damage prevention, ecosystems and, in general, the needs and welfare of the people.

One can readily see that, when the Corps applies these new requirements to applicants who are now discharging wastes without a permit and to existing permittees, the dischargers may find it difficult to comply. They will have to either cease discharging wastes into our waterways or provide effective treatment before the discharge occurs. But that, after all, is the very objective of all our pollution control laws. Until this objective is achieved, we cannot expect clean water.

Again I commend the Corps for announcing this policy. Its action is consistent with the recent decision by the U.S. Court of Appeals for the Fifth Circuit in *Zabel* v. *Tabb* (C.A. 5, July 16, 1970, No. 27555) which held—page 2:

"We hold that nothing in the statutory structure compels the Secretary [of the Army] to close his eyes to all that others see or think they see. The establishment was entitled, if not required, to consider ecological factors and, being persuaded by them, to deny that which might have been granted routinely five, ten, or fifteen years ago before man's explosive increase made all, including Congress, aware of civilization's potential destruction from breathing its own polluted air and drinking its own infected water and the immeasurable loss from a silent-spring-like disturbance of nature's economy."

I hope, however, that the Corps will do more than just issue a press notice of its intentions. I hope the Corps will follow up on this announcement by conducting, as I urged in my letter to the Corps of July 28, a vigorous campaign to notify all polluters of the requirements of the 1899 law and section 21(b) of the Federal Water Pollution Control Act.

I also hope that the Corps will support the current effort by Senator HART and others to add $4 million to the public works appropriation bill for fiscal year 1971—H.R. 18127—which passed the House on June 24, 1970, for the Corps to carry out this work on an accelerated pace. I urge my colleagues in the House to support this effort.

The Corps' policy of enforcing the Refuse Act is being applied somewhat gradually, becalse of personnel shortages.

Mr. Robert E. Jordan III, Special Assistant to the Secretary of the Army for Civil Functions who supervises the Corps civil works program, testified on July 29 before the Senate Subcommittee on Energy, Natural Resources and Environment of the Commerce Committee, as follows:

"Specifically, we are instructing all District Engineers that permits will be required for future discharges into navigable waters and that applications for such permits must be accompanied by an appropriate State certification.

"Initially we will have to concentrate on applying the permit and certification requirement to discharges from new facilities where the certification requirement is immediately effective and, with the assistance of FWQA, to discharges which are known to have a significant adverse affect on water quality. It will, of course, be impossible to individually notify all companies who now discharge into navigable waters of the requirement to apply for a permit. We will, however, through the Federal Register and other public means, attempt to make industry and concerned persons aware of our regulatory changes."

Similarly, Chairman Russell E. Train of the Council on Environmental Quality testified on August 11, 1970, before the Senate Public Works Subcommittee on Air and Water Pollution. Mr. Train said that the Council was working with the Interior and Justice Departments and the Corps in formulating a "new program" to be announced in about a month concerning enforcement of the 1899 law, regarding permit applications for "new facilities."

Mr. Speaker, I urge that the Corps' new policy of full enforcement of the 1899 law be made applicable, as soon as possible, to existing permittees, new facilities, and to existing dischargers who have failed to obtain a Corps permit. The damage to our waters and environment must be remedied with urgency.

There is one discordant item in the Corps press release of July 30, 1970:

"All actions under the Refuse Act having Water Quality implications are being closely coordinated *to insure unity in the Federal Water anti-pollution program.*" (Italic supplied.)

This statement appears to reiterate the doctrine of limited enforcement of the 1899 law adopted by the Justice Department on July 10, 1970. That doctrine favors the polluter over the public's interest in preventing the pollution of our waterways.

The Justice Department has said that a polluter can continue to violate the 1899 law, if he is subject to some unspecified proceeding of the Federal Water Quality Administration. No one knows what this proceeding is. I doubt that even the Justice Department of FWQA have any understanding of what it might be.

But, most importantly, it is a doctrine that has no relevance to the 1899 law or section 21(b) of the Federal Water Pollution Control Act.

The Federal Water Pollution Control Act specifically disclaims that it, in any way, effects the 1899 law. To discharge refuse material into a navigable waterway without a Corps permit, even if treated, is a violation of the 1899 law, the law says that U.S. attorneys must vigorously prosecute the violator.

I wrote to Attorney General Mitchell on July 8, 1970, urging him to abandon that pollution-oriented doctrine, and I informed the House about this on July 15, 1970—CONGRESSIONAL RECORD, pages H6797–H6798. However, I have not yet received a response from the Department.

The Corps' press release mirrors that doctrine when it states:

"All actions under the 1899 act with water quality 'implications are being closely coordinated' with FWQA *to insure unity in the Federal Water anti-pollution program.*" (Italic supplied.)

Last May the Corps and Federal Water Quality Administration announced they were preparing a memorandum of understanding on enforcement of the 1899 act which would, in effect, give the Federal Water Quality Administration, not the Corps, responsibility for enforcing that act. Under the proposed memorandum, the Corps would ask the Federal Water Quality Administration to make recommendations on each proposed enforcement action to see how the Federal Water Quality Administration "proceeding" would be affected.

As I have stated time and time again, the responsibility to enforce the 1899 act belongs solely to the Corps and the U.S. attorneys, not the Federal Water Quality Administration. The recommendations of the Federal Water Quality Administration do not alter that responsibility.

It is my hope that the Corps will not repeat the errors of the Justice Department. The Corps should resist the pressure to tie its hands through such coordination. Its only course must be to enforce the 1899 law as announced above. It must require, through all appropriate means, including criminal sanctions and civil actions, that all waste dischargers obey the law and stop the degradation of our waterways to the public's detriment and the polluter's profit.

The Congress recently stated a new national policy for protecting the environment. This policy, and the procedures to carry it out, are carefully detailed in the National Environmental Policy Act of 1969—Public Law 91-190, approved January 1, 1970—and the Environmental Quality Improvement Act—Public Law 91-224, title II, approved April 3, 1970.

Section 102(C) directs all Federal agencies including the Justice Department, to include, in all "major Federal actions significantly affecting the quality of the human environment," a detailed statement on—

First, the environmental impact of the proposed action;

Second, any adverse environmental effects which cannot be avoided should the proposal be implemented;

Third, alternatives to the proposed action;

Fourth, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

Fifth, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Section 5(a) of the interim guidelines issued by the Council on Environmental Quality dated April 30, 1970 (35 F.R. 7390 7391) defines the term "actions," for the purpose of determining whether a "detailed statement" is required to include "policy-and-procedure-making" activities of an agency.

In its "Guidelines for Litigation Under the Refuse Act (33 U.S. Code 407)" of July 10, 1970, the Justice Department states as follows—page 3:

"II. POLICY

"1. The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with the State pollution abatement procedures, *but rather to use it to supplement that Act by bringing appropriate actions either to punish the occasional or recalcitrant polluter, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the pollutor has failed to comply with obligations under such a procedure* * * *.'" (Italic supplied.)

Thus, the Justice Department, in issuing its guidelines, established a "policy" as that term is defined by the Council, but it did not, to our knowledge, prepare and send to the Council a "detailed statement," as required by the National Environmental Policy Act, on that policy.

Mr. Speaker, how can the public believe that its Government will relentlessly follow a course of protecting and enhancing the quality of the environment, when the Government's chief law-and-order agency violates one of the most important environmental protection laws of this country?

The Justice Department is quite willing to enforce the law against the occasional pollutor, but not against the big corporate pollutors who continuously violate our pollution laws. It is this type of ragged enforcement that breeds contempt and disrespect for the law.

I urge the Chairman of the Council to review this violation with the Justice Department and to seek the prompt resession of this unfortunate policy.

Section 21(b) was added to the Federal Water Pollution Control Act by the Water Quality Improvement Act of April 3, 1970, Public Law 91-224. That section requires, as I have said, that an applicant "for a Federal license or permit to conduct any activity, which may result in any discharge into" a navigable waterway, must obtain a "certification from the State in which the discharge originates or will originate." The State must certify "that there is reasonable assurance, as determined by the State, that such activity will be conducted in a manner which will not violate applicable water quality standards" before such license or permit may be granted.

Many Members of the House and Senate have joined with me in pointing out that, if the Corps and the U.S. attorneys vigorously enforce the 1899 law by requiring polluters to get Corps permits, it will trigger the certification provisions of section 21(b). We expect these certificates will not be granted until the State is satisfied that there is, in fact, a firm basis for such assurances. In the absence of such an application for a permit, section 21(b) will not apply. Further, applicants for Corps permits must also comply with its new regulations which are designed to protect our environment.

Mr. Shiro Kashiwa, Assistant Attorney General, Lands and Natural Resources Division, does not yet seem to understand the law.

In a letter he sent to the Conservation Foundation on July 27, 1970, he said:

"I cannot agree with you that the licensing procedure you advocate would be an effective way to abate pollution. The chief defect of the plan is that it does indirectly, and requires an extra step to do, what may now be done directly and without further licensing. *No person or firm at the present time is exempt from the requirement of compliance with water quality standards*, where those standards have been established; and *it is therefore completely unnecessary for the federal government to license a person's activities to subject him to those standards*. Thus your statement on page 3 of your letter that 'of no permit is required by the Corps of Engineers, then the guarantes of Section 21(b) cannot be applied' *misses the point entirely, for it supposes that the States cannot impose their own laws on their citizens except through the medium of a federal license. The purpose of Section 21(b) of the Water Quality Improvement Act is to prevent the federal government from licensing polluting activities which are unlawful under the laws of the state where the activities occur; it is unnecessary to bring this Section into play where a federal license has not issued and the polluting activity is therefore illegal under federal as well as state law.*'" (Italic supplied.)

I respectfully suggest that Mr. Kashiwa, not the Conservation Foundation, misses the point entirely.

First, not all polluters are subject to water quality standards under section 10(c) of the Federal Water Pollution Control Act. The only polluters who are subject to water quality standards are those who discharge wastes into interstate waters covered by section 10(c) or into those noninterstate waters for which the State has adopted its own standards.

Second, Mr. Kashiwa states that the purpose of section 21(b) is to prevent the Federal Government from licensing polluting activities in violation of State laws. That is far too narrow an interpretation of the law.

Its purpose is to assure that all activities, which, in order to discharge lawfully into a navigable waterway, must obtain a Federal license or permit, will also comply with applicable Federal, State, or local water quality standards. Congress sought to assure this through the use of a certification issued by a State, or, if appropriate, by the Secretary of the Interior.

Clearly, a discharger who has failed to obtain a Corps permit under the 1899 Act is not "lawfully" discharging into a waterway. Yet that discharger is discharging into a waterway, probably without consideration of applicable water quality standards. There is no assurance that a State is aware of the discharger's violation of its standards, let alone the Federal law. But, if the discharger is required to obey the law and apply for a Corps permit, it will soon come to light whether the discharger is or is not complying with applicable standards.

Third, and most importantly, as we have stated time and time again, the 1899 law is a valid Act of Congress. It must be enforced. No polluter may discharge refuse into a navigable waterway without a Corps permit. The responsibility of the polluter to get a permit is not diminshed or eliminated by the fact that the polluter may be violating a Federal or State law too.

Mr. Kashiwa, in his July 27, 1970, letter to the Foundation, also said as follows:

"Let me here assert that where the Department is supplied by a United States Attorney or any other source with hard evidence of a violation of the Refuse Act, and where the violation is of a type which the United States Attorney cannot under the Guidelines initiate on his own authority, this Department will authorize the initiation of the action, *unless effective measures to abate that pollution* *are already being taken by the Federal Water Quality Administration or by a State through court action.'* " (Italic supplied.)

I am very puzzled by Mr. Kashiwa's statement when viewed in juxtaposition with the Justice Department's Guidelines.

Does he really mean that where any U.S. attorney requesting authorization to institute an action against a violator of the 1899 law shows first, that the violator is continuously discharging wastes into a navigable waterway; second, that he has hard evidence of a violation; and third, that the Federal Water Quality Administration or a State has not already taken steps "to abate that pollution through court action," the Justice Department will authorize such action? If the answer to that question is "yes," then I congratulate Mr. Kashiwa for, in effect, sacking the guidelines by defining "proceeding" to mean there must be underway a FWQA or State instituted "court action."

This would be a far cry from the totally non-public-interest position of the Justice Department, as stated in its guidelines. While it does not conclude that a Corps permit must be obtained regardless of the Federal Water Quality Administration's or a State's court action, it has the same effect. Why? Because there are no Federal Water Quality Administration abatement actions now in court under the Federal Water Pollution Control Act, and, to my knowledge, none is on the horizon.

Mr. Kashiwa's letter explains that one of the purposes of the guidelines was to acquaint the U.S. attorneys that actions not merely for fines and imprisonment, but also for injunctive relief could be brought under the Refuse Act. The report of the House Government Operations Committee emphasized this aspect of enforcement of the act. I am pleased that the Justice Department is now emphasizing it too.

I again call on the Justice Department to respond to my letter of July 8, 1970, rescind the guidelines, and vigorously enforce the 1899 law as the Corps is now doing.

I append the text of the Corps of Engineers press release of July 30, 1970; Senator PHILIP A. HART's letter of August 7, 1970, to Senator ELLENDER urging that $4 million be added to the Corps appropriation for fiscal year 1971; and Mr. Kashiwa's letter of July 27, 1970, to the Conservation Foundation and the Foundation's reply of August 7, 1970, for inclusion in the RECORD at this point:

[NOTE.—The Corps of Engineers press release of July 30, 1970, is printed on p. 120 of this appendix.]

"U.S. SENATE,
"*Washington, D.C., August 7, 1970.*

"Hon. ALLEN J. ELLENDER,
"*U.S. Senate,*
"***Washington, D.C.***

"DEAR SENATOR ELLENDER: In hearings last week on mercury pollution before the Senate Subcommittee on Energy, Natural Resources and the Environment, we discussed the potential usefulness of the Refuse Act of 1899 to prevent further crises of the kind experienced with mercury. The Corps of Engineers testified that while the Act was a valuable tool for pollution control, it had not been used as such in the past. The Corps pledged, however, to begin to administer the Act aggressively if adequate staff and funding could be made available.

"The Act states that no waste may be dumped into the navigable waters of the United States without a permit from the Corps. It thus provides a means to compile an inventory of all effluents being discharged into our waters and to effect pre-clearance by Federal authorities of all potentially harmful pollutants in such discharges. Such inventorying and pre-clearance mechanisms, I would argue, are essential to effective water pollution control.

"These mechanisms will operate, however, only if those discharging waste are made plainly aware of the permit requirements of the Refuse Act. Increased personnel will be needed both to pass on applications and to police those who fail to apply on their own initiative.

"The Corps' 'fact sheet' of August 4 specifies additional personnel and funds required to 'initiate expanded activity' under the Act. It is my hope that your committee will include in the bill it reports their figure of $4,000,000 for fiscal year 1971. In light of the alarming evidence of nationwide water pollution with which we are increasingly confronted, we must do what is necessary to reverse the trend. Increased appropriations for the administration of the Refuse Act, I believe, would be a major step in that effort.

"Sincerely yours,

"PHILIP A. HART,
"*Chairman, Subcommittee on Energy,
Natural Resources and the Environment.*"

"Department of Justice,
"*Washington, D.C., July 27, 1970.*

"Mr. Arthur A. Davis.
"*Vice President, The Conservation Foundation,*
"*Washington, D.C.*

"Dear Mr. Davis: I am happy to have this opportunity to answer the questions with regard to the enforcement of the Refuse Act raised in your letter of July 15, 1970 to me, and to correct the misconstruction of our Guidelines for Litigation under the Refuse Act which have been publicized by certain persons and which are reflected in your letter.

"The first thing which you must realize is that the Guidelines are instructions to the United States Attorneys. The reason for the issuance of the Guidelines was that many United States Attorneys were unfamiliar with the provisions of the Refuse Act of 1899, and those who were familiar with it were uncertain as to how they might proceed to prosecute violations. For example, Section 17 of the Rivers and Harbors Act of 1899 (of which the Refuse Act is Section 13) states that 'it shall be the duty of the United States Attorneys to vigorously prosecute all offenders against the * * * [Refuse Act] when requested to do so by the Secretary of the Army or by any of the officials hereinafter designated * * *.' It has become increasingly common, however, for possible offenses of the Refuse Act to be reported to the United States Attorneys from sources other than those designated in the statute, and the manner of proceeding on these cases, therefore, was not clear. Very often, the reports of violations were in the most general terms—'X Company is polluting'—and nothing even remotely resembling proof in support of the allegation was presented; the problem then arose, how to obtain evidence to prove the charge in court.

"Furthermore, the Refuse Act—that is, 33 U.S.C. 407—is in its express terms of criminal statute, and the only sanctions specifically provided for the violation of its provisions are fine and/or imprisonment. Obviously, thus to punish pollution without stopping it would not be of much aid to the environment.

"The purpose of the Guidelines, then, was to advise the United States Attorneys that they might take action on violations of the Refuse Act reported from any *source*, to indicate to them what Federal agencies could be of assistance to them in securing proof of the allegations of discharges in violation of the Refuse Act, and to acquaint them with the fact that the Department believed that actions not merely for fines and imprisonment, but also for injunctive relief could, in appropriate cases, be brought under the Refuse Act.

"To this end, the first significant change in previous procedures instituted by the Guidelines was to authorize the United States Attorneys, when they had acquired what they deemed to be evidence sufficient to prove a case, to initiate on their own initiative and authority, with no need of approval from the Department of Justice in Washington, either criminal actions to punish violations of the Refuse Act, or civil actions to enjoin such violations. Prior to the authorization to bring such actions thus conferred by the Guidelines, any United States Attorney who wished to bring any type of action under the Refuse Act involving shore-based pollution, except in New York Harbor, was required to secure the approval of the Department of Justice. Thus the statement on page 2 of your letter, that prior to the issuance of the Guidelines Departmental clearance for the initiation of an action under the Refuse Act was not required, simply is not correct, and the Guidelines represent a significant decentralization of authority in the operations of the Department.

"Now it is true that there are three significant areas wherein the requirement for Departmental clearance was continued. These three areas are set forth in Paragraph III–3, 4 and 5 of the Guidelines. These three exceptions embrace alleged violations of the Refuse Act by (1) State or municipalities, or persons whose actions in violation of the Refuse Act are purportedly authorized by States or municipalities; (2) persons or firms whose polluting activities are the subject of an administrative proceeding conducted by the Federal Water Quality Administration, and (3) persons or firms who are the subject of State, County or Municipal civil or criminal litigation. (A fourth exception, involving foreign vessels, is of minor consequence). In any matter falling within these three exceptions, the United States Attorney may not initiate action on his own; instead, as required by Paragraph III–7 of the Guidelines, he must assemble the facts and evidence showing that a case exists, and then, after himself making the initial decision as to whether injunctive or criminal sanctions would most be in the public interest, forward the information either to the Criminal Division or to this Division to secure authorization to bring the suit.

"Much of the criticism I have read of the Refuse Act Litigation Guidelines appears to be based on the assumption that because the United States Attorneys may not themselves initiate three types of actions, then the Department of Justice will not initiate actions falling within these three areas. But this assumption is erroneous, and indeed could not have been arrived at by anyone willing to read the guidelines carefully: the first sentence of Paragraph II–1 states:

" 'The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is

" '(1) not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with State pollution abatement procedures, but rather

" '(2) to use it to supplement that Act by bringing appropriate actions either to punish the occasional or recalcitrant pollutor, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the pollutor has failed to comply with obligations under such a procedure.'

"I have added the brackets and underlining to this quotation to facilitate its reading, since so many seem to have had difficulty in reading it in its ordinary form, and to emphasize that continuing industrial discharges are not automatically exempted from prosecution by the Department. In your letter, you stated on page three:

" 'We recognize that the Refuse Act does not itself constitute a water pollution control program. Rather it is a means by which federal and state water quality programs can be enforced.'

"This, I think you will agree, is substantially the same as the quoted language from our policy statement.

"But to make the matter clear beyond doubt, let me here assert that where the Department is supplied by a United States Attorney or any other source with hard evidence of a violation of the Refuse Act, and where the violation is of a type which the United States Attorney cannot under the Guidelines initiate on his own authority, this Department will authorize the initiation of the action, unless effective measures to abate that pollution are already being taken by the Federal Water Quality Administration or by a State through court action.

"This brings us to your suggestion that the Corps of Engineers use its permit authority to require pollutors to obtain licenses, thereby requiring them to comply with applicable water quality standards. What policies the Corps of Engineers might adopt with respect to the issuance of licenses under the Refuse Act is, of course, a matter for the Corps to decide, but I cannot agree with you that the licensing procedure you advocate would be an effective way to abate pollution. The chief defect of the plan is that it does indirectly, and requires an extra step to do, what may now be done directly and without further licensing. No person or firm at the present time is exempt from the requirement of compliance with water quality standards, where those standards have been established; and it is therefore completely unnecessary for the Federal Government to license a person's activities to subject him to those standards. Thus your statement on page 3 of your letter that "if no permit is required by the Corps of Engineers, then the guarantees of Section 21(b) cannot be applied" misses the point entirely, for it supposes that the States cannot impose their own laws on their citizens except through the medium of a Federal license. The purpose of Section 21(b) of the Water Quality Improvement Act is to prevent the federal government from licensing polluting activities which are unlawful under the laws of the state where the activities occur; it is unnecessary to bring this Section into play where a Federal license has *not* issued and the polluting activity is therefore illegal under Federal as well as State law.

"In my opinion, the policy we are pursuing is the one most calculated to obtain the maximum results from existing statutes. Since, under our Guidelines, the United States Attorneys now have considerable authority to initiate actions under the Refuse Act on their own, I do not know how many actions have been initiated by them since June 15, and I expect that it may be some time before we can have these figures. We have attempted to act promptly on the requests for authorization which have been sent in to us pursuant to the Guidelines; as you may have read, we recently authorized the United States Attorney in New

Haven, Connecticut to initiate actions against the City of Bridgeport and five firms within the city to enjoin their violations of the Refuse Act. We have given similar authority to the United States Attorney in Cleveland with respect to the continuing violations of the Refuse Act committed by a chemical company. On Friday, July 24, having been supplied with evidence of violations by the Department of the Interior, we authorized the United States Attorneys to bring actions to enjoin the discharges into the navigable waters of the United States of mercury issuing from ten plants. Other requests for authorization are under study.

"One of the most important things for you to be aware of is that the greatest limitation on our ability to bring actions under the Refuse Act is not that statute, or any other statute, or our policies thereunder, but the acquisition of substantial evidence to prove the charge. It is apparently your assumption that the Corps of Engineers has referred to the Department of Justice many alleged violations of the Refuse Act, which the Department has failed to prosecute; I think that if you will check with the Corps of Engineers, and its regional offices, you will find that in fact the United States Attorneys have asked the Corps of Engineers to supply data or evidence with respect to many alleged violations, but that the Corps, because of limitations of manpower, simply has not been able to investigate these alleged violations, or to supply the required data. Lacking proof of a violation of the Refuse Act, the United States Attorneys cannot go to Court. Improved ways of obtaining proof, and the opening up on the local level of channels of communication between the United States Attorneys, the regional offices of the Corps of Engineers, and the local offices of the Federal Water Quality Administration, are subjects which are now under discussion. I believe that the situation will improve considerably in the near future, and that if you but observe our implementation of the Guidelines, you will be more than satisfied with the actions we take.

"Sincerely,

"SHIRO KASHIWA,
"Assistant Attorney General."

"THE CONSERVATION FOUNDATION,
"Washington, D.C., August 7, 1970.

"Hon. SHIRO KASHIWA,
"Assistant Attorney General, Lands and Natural Resources Division, Department of Justice, Washington, D.C.

"DEAR MR. KASHIWA: We appreciate your response to our letter of July 15 regarding the Justice Department Guidelines for Litigation under the Refuse Act. Your letter has, indeed, clarified the Department's position.

"The need to inform U.S. Attorneys about Refuse Act remedies is, as you explain, understandable. Certainly we agree that the Refuse Act could be used with more effect if U.S. Attorneys were made more familiar with it.

"Our basic difficulty, which your letter has not dispelled, is with the underlying policy of the Guidelines. There is a difference between use of the Refuse Act as a supplement to the federal and state water quality program, and its use as an enforcement tool to pursue that program.

"This difference is highlighted by the statement in your reply that water quality standards can be obtained without regard to the provisions of Section 21(b) of the Water Quality Improvement Act. You note that 'no person or firm at the present time is exempt from the requirement of compliance with water quality standards, where those standards have been established; and it is, therefore, completely unnecessary for the Federal Government to license a person's activities to subject him to those standards." Your letter goes on to say that our recommended use of Section 21(b) 'misses the point entirely, for it supposes that the States cannot impose their own laws on their citizens except through the medium of a Federal license.'

"The policy you articulate disregards the theory behind the Federal Water Pollution Control Act; Federal leverage is required to force States to establish and implement water quality standards. Mercury dumping is only one example indicating that while states now have a water pollution permit system, they frequently neglect it. That the Federal Government should insist on such State attention to individual pollutors is consistent with current Federal water pollution policy. Therefore, Section 21(b) requires States to implement their pollution controls under Federal supervision over all U.S. navigable waters, whether or not intrastate. Federal policing initiative under the Federal Water Pollution Control Act is, of course, limited to interstate pollution.

"Use of Refuse Act permits under Section 21(b) likewise allows quick Federal enforcement of State water quality standards through injunctive remedies, rather than under the six month procedures on which FWQA must rely. Where the Federal Government alone has testing facilities capable of detecting pollution, especially the toxic variety like mercury, this injunctive use of Refuse Act remedies under section 21(b) is both logical and necessary. Once Corps permits were issued in accordance with Section 21(b), the Federal Government would be in a position to take quick abatement action when it determines that State water quality standards were being violated in U.S. navigable waters.

"We are heartened, of course, to know that the Justice Department has taken action against certain companies now dumping mercury in violation of the Refuse Act. We hope that the Department will take similar action against the unlawful discharge of other insidious, less notorious substances in the future. That such actions have been difficult to bring because U.S. Attorneys lack information on Refuse Act violations should be easily remedied. It is true, as you state 'that the Corps, because of limitations of manpower, simply has not been able to investigate these alleged violations or to supply the required data.' But although the Corps does require a larger staff in its district permit offices, expertise on these matters resides with the FWQA and not the Corps. Vigorous efforts of the Justice Department would seem best directed to ensure optimum cooperation from the FWQA. We look forward to early and satisfactory reports of your current efforts to improve the relations between Justice and the FWQA.

"We were gratified to learn that the Department will authorize actions under the Refuse Act 'unless effective measures to abate that pollution are already being taken by the Federal Water Quality Administration or by a State through court action.' As we observe the Department's implementation of the Guidelines, we share your hope that we will be satisfied with the results.

"Sincerely,

"ARTHUR A. DAVIS,
"Vice President for Operations."

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., August 20, 1970.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: In the absence of the Chief of Engineers, I am responding to your recent letter urging the Corps of Engineers to initiate a permit program under the Refuse Act, 33 U.S.C. 407, and also urging the corps to revise its public notices posted near navigable waters to apprise the public that one-half the fines collected are payable to persons giving information leading to conviction.

I am pleased to inform you that prior to receipt of your letter the Department of the Army had announced the initiation of a new permit program under the Refuse Act, 33 U.S.C. 407. This appears in the testimony of Mr. Robert E. Jordan III, general counsel and special assistant to the Secretary of the Army for Civil Functions, and from a news release dated July 30, 1970, copies of both being enclosed for your ready reference.

I have considered your suggestion that notices posted by the Corps of Engineers near navigable waters should advise the public that under the Refuse Act one-half of the fine imposed by a court shall be payable to the person or persons giving information which shall lead to conviction. The courts have held that payment is made to an informer only when a fine is imposed. Where the Government pursues a civil remedy no payment is due the informer. Normally the Government proceeds civilly, rather than criminally, under the Refuse Act. Most cases of illegal discharges involve either discharges from vessels, where a civil penalty is assessed against the vessel or discharges from shore-based industrial facilities, where the seeking of an injunction is the most effective use of the Refuse Act. I am fearful that the public will be led to false expectations if posted notices encouraged the reporting of violations for financial gain. However, I intend to explore this question further by consultation with the Department of Justice.

I thank you again for your interest in the role that the corps can play in pollution control.

Sincerely,

C. H. Dunn,
Major General, United States Army,
Deputy Chief of Engineers.

U.S. House of Representatives,
Conservation and Natural Resources Subcommittee,
Committee on Government Operations,
Washington, D.C., August 24, 1970.

Lt. Gen. Frederick J. Clarke,
Chief of Engineers, Department of the Army,
Washington, D.C.

Dear General Clarke: The data furnished to this subcommittee in tabular form by the Corps of Engineers on June 24, 1970, concerning permits issued by the corps under the River and Harbor Act of March 3, 1899 (30 Stat. 1151), has been quite helpful to us.

I.

The data provided to us in table A raises some points that need clarification. That table is entitled: "Data concerning *existing* permits issued *since March 3, 1899*, by the Corps of Engineers to any person for the purpose of discharging industrial wastes into navigable waters within or bordering any State." We would appreciate your response to the following, before September 8, 1970:

1. Many of the permits listed in table A show that the term of the permit expired prior to the date that table A was prepared and submitted to us (e.g., New Jersey, p. 9) Shell Chemical Co. was issued a permit on September 27, 1961, under section 10 of the act and the term of the permit expired Dec. 31, 1964). In view of the language of the heading of table A, please state:

(*a*) Does the corps consider all permits shown on table A as still "existing?"

(*b*) If the answer to (*a*) is no, please state why these permits were so listed in table A.

(*c*) If the answer to (*a*) is yes, why does column 6 ("term of permit") of table A state that some permits have expired?

(*d*) If the date specified in column 6 of table A refers only to the period in which construction must be completed, to what extent does the corps maintain control over the use and operation of the completed structure under that permit?

(*e*) Does the corps require the permittee to obtain periodically a renewal of the permit so long as the structure remains?

(*f*) If not, please state why not?

2. Column 7 "Date of Last Inspection to Insure Compliance with Permit" of table A shows the date of last inspection to insure compliance with the permit. In many cases, there have been no recent inspections.

(*a*) Please state the corps policies concerning inspection of activities conducted under corps permit.

(*b*) Does the corps inspect the work (*i*) during its construction, and (*ii*) periodically after its completion?

(*c*) How many persons does the corps now employ to perform such inspections?

(*d*) How many inspectors will the corps need to perform this work in furtherance of its new full enforcement policies and regulations?

(*e*) Please provide to us a 5-year (fiscal years 1972–77) estimate of funds and personnel needs (*i*) for such inspections, and (*ii*) for implementing fully the policies set forth in the corps news release of July 30, 1970.

II.

Mr. Robert E. Jordan III, special assistant to the Secretary of Army for Civil Functions, testified on July 29, 1970, before the Senate Subcommittee on Energy, Natural Resources, and Environment that:

"Although our section 403 permit program is limited to applications for permits for work in navigable waters and *we do not have at this moment a program which requires a permit for discharges or deposits into navigable waters, we are presently working on the establishment of a permit specifically relating to discharges.*

* * * * * * *

"* * * We are instructing all district engineers that *permits required for future discharges* into navigable waters and that applications for such permits must be accompanied by an appropriate State certification" (italic supplied).

Table A, whose heading refers to permits "for the purpose of discharging industrial wastes into navigable waters," indicates that all except six of the permits listed in that table were issued under "section 10" of the River and Harbor Act of 1899 (33 U.S.C. 403).

3. (*a*) Does this mean that the corps construes all the permits listed on table A, particularly including those listed as issued under section 10, as covering both the construction of the structure therein authorized and the discharge and deposit of refuse material?

(*b*) If the refuse to be discharged is solids, would the section 10 permit cover such discharges?

(*c*) If the answers to (*a*) and/or (*b*) are yes, what is the statutory basis for so construing these permits?

(*d*) Please provide to us a copy of each of the permits listed on table A.

4. Under the new policy stated by Mr. Jordan, will the corps require that an applicant who is applying for a permit to construct, for example an outfall sewer, must also apply for a permit to discharge refuse from such sewer?

5. If there is any existing corps permit issued since March 3, 1899, authorizing the discharge of industrial wastes into navigable waters within or bordering any State *under section 13* of the act (33 U.S.C. 407), other than those listed on table A, please provide a supplemental table A, in the same format.

6. In its news release of July 30, 1970, the corps said that permits "will also be required for *current* discharges * * * where no permits have been granted." Mr. Jordan testified that permits "will be required for *future* discharges" (italic supplied).

(*a*) Please explain the apparent discrepancy between these two statements.

(*b*) Has the corps developed and published regulations governing discharges under section 13 of the act?

(*c*) If the answer to (*b*) is no, please tell us when such regulations will be developed and published.

(*d*) If the answer is yes, please provide to us a copy of them.

III.

Table B enclosed with your letter of June 24, 1970, to us provides data concerning existing permits issued *since January 1*, 1965, by the Corps of Engineers to any person for the purpose of discharging dredged material into navigable waters within or bordering any State. Column "section of 1899 act under which permit issued" of table B states that most of these permits were also issued under section 10 of the act.

7. (*a*) Please explain to us why these permits were issued under section 10 of the 1899 law and not section 13.

(*b*) Please explain to us why some permits are listed under other sections of the act?

(*c*) Please provide to us a copy of each of the permits listed on table B.

(*d*) Why were permits listed on table B for New York issued under the 1899 law and not under the New York Supervisory Act (33 U.S.C. 441–451)?

8. As in table A, there appears to be a descrepancy between the heading of table B which indicates that all of the listed permits are "existing" and column (3) "Term of Permit," which shows some permits have expired.

(*a*) Does the corps consider all permits shown on table B as still "existing"?

(*b*) If the answer is no, please state why these permits were so listed in table B.

(*c*) If the answer is yes, why does column (3) state that some permits have expired?

(*d*) Does the corps require the permittee to obtain a renewal of the permit in order to continue dredging?

(*e*) If not, please state why not.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 25, 1970.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, U.S. Army,
Washington, D.C.

DEAR GENERAL CLARKE: We appreciate Maj. Gen. C. H. Dunn's reply of August 20, 1970, to our letter of July 28, 1970, concerning the corps' enforcement of the 1899 Refuse Act.

We were pleased to learn, as I stated in my letter of August 19, 1970, that the corps adopted a policy of full enforcement of the law in accordance with our recommendation I of July 28, 1970.

Our subcommittee's letter of July 28, 1970, to you also suggested that notices posted by the corps near navigable waters should advise the public that under the Refuse Act (33 U.S. Code 407, 411) one half of the fine imposed on a violator of that statute is payable to the person or persons giving information which lead to conviction.

Maj. General Dunn's response of August 20 states:

> The courts have held that payment is made to an informer only when a fine is imposed. Where the Government pursues a civil remedy no payment is due the informer. *Normally the Government proceeds civilly, rather than criminally, under the Refuse Act. Most cases of illegal discharges involve either discharges from vessels, where a civil penalty is assessed against the vessel* or discharges from shore-based industrial facilities, where the seeking of an injunction is the most effective use of the Refuse Act. I am fearful that the public will be led to false expectations if posted notices encouraged the reporting of violations for financial gain. (Italics supplied.)

We would appreciate your providing the following information to us:

1. Please cite each case and provide a copy of the opinion or judgment therein, in which courts ruled that payment to informers is payable only where "a fine" is imposed?
2. What is the Government's authority for the Government to assess "a civil penalty" against a vessel in the case of an illegal discharge under the Refuse Act?

We appreciate General Dunn's statement that you are consulting with the Department of Justice concerning our suggestion about revising the notice. In this connection, we point out to you as follows:

(a) If 33 U.S.C. 411 provides the authority referred to in question 2 above, it would certainly seem that such interpretation also applies to authorize payment of a moiety to the informer where a civil penalty is assessed, as well as where a fine is imposed.

Moreover, recent publicity given to cases filed by the Justice Department in the past year under the 1899 law would indicate that, in most cases, the Government has sought criminal, not civil, remedies.

(b) House Report 91–917, issued by the House Committee on Government Operations on March 18, 1970, pointed out that a citizen may bring a *qui tam* action for his moiety of the fine or penalty.

Both of these points support our suggestion for revision of the notice.

We would appreciate your response and comment.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., September 10, 1970.

Hon. HENRY S. REUSS,
Chairman, Subcommittee on Conservation and Natural Resources, Washington, D.C.

DEAR MR. REUSS: General Clarke has asked that I acknowledge your recent letter requesting certain information on the data furnished your subcommittee on June 24, 1970, on permits issued under the River and Harbor Act of March 3, 1899.

In order to comply with your request, extensive research and review and coordination with the Office of the Secretary of the Army will be necessary. Upon completion thereof, I will furnish General Clarke with complete information on the matter for further communication with you.

Sincerely yours,

J. B. NEWMAN,
Colonel, Corps of Engineers,
Executive Director of Civil Works.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 18, 1970.

Hon. GEORGE H. MAHON,
Chairman, House Committee on Appropriations,
Washington, D.C.

DEAR MR. CHAIRMAN: I want to bring to your attention the urgent need for, and the great public benefit which can result from, providing to the Corps of Engineers the funds needed to finance the corps' newly announced program of requiring that persons who discharge wastes into the Nation's waterways, seek and obtain corps permits.

The corps new program stems from the report issued by the Committee on Government Operations (H. Rept. 91-917, March 18, 1970) prepared by our subcommittee, entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution." Two copies of the committee's report are enclosed.

The committee's recommendations 6, 7, and 8, were as follows:

> 6. The Corps of Engineers should vigorously enforce the Refuse Act of 1899 which prohibits discharge of refuse into navigable waters and deposit of polluting materials on their banks (p. 17).
>
> 7. Both the Corps of Engineers and the Federal Water Pollution Control Administration should request the Attorney General to institute injunction suits against all persons whose discharges or deposits (except minor ones) violate the Refuse Act and are not promptly cleaned up or stopped by the polluter (p. 18).
>
> 8. The Corps of Engineers should proceed to increase its capability, including seeking the necessary contingency funds, to enable it to promptly remove or clean up pollutional discharges and deposits and to seek reimbursement of the costs thereof from persons who willfully or negligently made or caused such discharges or deposits (p. 18).

Pursuant to these recommendations, the Corps of Engineers announced on July 30, 1970, its new program to enforce the 1899 Refuse Act. Specifically, the corps said as follows (See Congressional Record (daily issue) p. H8364):

> Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been been granted.

We believe that this new policy is a giant step in the direction of controlling industrial waste discharges that degrade our Nation's waterways. The corps has informed us that there are 22 States in which there are no permits authorizing the discharge of wastes into our waterways. In other States only a few permits have been issued. Thus, there are thousands of industries now discharging wastes without any corps permit and in violation of the 1899 law. Under the corps' new policy, the polluter will either have to apply for and obtain a corps permit, or face prosecution under the Refuse Act, or cease discharging its wastes.

The executive branch, however, has failed to ask the Congress to appropriate funds for the current fiscal year to implement this policy. Without such funds, the new policy will be gravely hampered and have little capacity to prevent pollution.

Recently the corps told Senator Hart's Subcommittee on Energy, Natural Resources, and the Environment that $4 million would be needed this fiscal year to implement its new policy.

We understand that Senator Ellender, chairman of the Senate Appropriations Committee, will hold hearings for the purpose of including such funds in the supplemental appropriation bill to be considered before Congress adjourns (Cong. Rec. pp. S13992–93).

We hope your committee will favorably report the appropriation of the sum needed by the Corps of Engineers to implement their new policy fully in this fiscal year. We must not allow the momentum that has been built up since our committee's report of last March to wither away because the executive branch postpones the funding of the corps' new and positive pollution control efforts.

I shall be very glad to testify before your committee on this matter if you hold hearings on it.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 23, 1970.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I want to bring to your attention the urgent need for, and the great public benefit which can result from, providing to the Corps of Engineers the funds needed to finance the corps' newly announced program of requiring that persons who discharge wastes into the Nation's waterways must have corps permits.

The corps' new program is fully in accord with the objectives of your environment message to Congress of February 10, 1970 (H. Doc. 91–225).

It also embodies the recommendations in the report issued on March 18, 1970, by the Committee on Government Operations (H. Rept. 91–917) and prepared by our subcommittee, entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution."

Pursuant to the committee's recommendations, the Corps of Engineers announced on July 30, 1970, its new program to enforce the 1899 Refuse Act. Specifically, the corps said as follows (see Cong. Rec. (daily issue), p. H8364):

> Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been granted.

We believe that this new policy is a giant step in the direction of controlling industrial waste discharges that degrade our Nation's waterways.

The corps has informed us that there are 22 States in which there are no corps permits authorizing the discharge of wastes. In other States only a few permits have been issued. Thus, there are thousands of industries now discharging wastes into our waterways without any corps permit and in violation of the 1899 law.

Under the corps' new policy, the polluter will either have to apply for and obtain a corps permit, or face prosecution under the Refuse Act, or cease discharging its wastes.

Last week, Mr. Robert E. Jordan, III, General Counsel of the Department of the Army and Special Assistant to the Secretary of the Army for Civil Functions, testified before our subcommittee that in the 37 engineer districts with civil functions * * * only approximately 110 people * * * work in the permit area, and some of these are part time." He said that in the Detroit District Engineer's office "only two men" are assigned to duties concerning the issuance and enforcement of Corps permits.

Mr. Jordan indicated that the appropriation of $4 million in this fiscal year before Congress adjourns "would be a great boost" and would allow the Corps "to get off to a running start" on this important environmental program to prevent further degradation of our Nation's waters.

Unfortunately, an official request for this amount from the administration has not yet reached the Congress.

We understand that Senator Ellender, chairman of the Senate Appropriations Committee, will hold hearings for the purpose of including such funds in the supplemental appropriation bill to be considered before Congress adjourns. (Cong. Rec. pp. S13992–93.) We have asked the chairman of the House Committee on Appropriations to report favorably the appropriation of this sum.

We urge that you instruct the Corps and the Office of Management and Budget to accelerate the sending of a budget request to the Congress for this sum so that it may be acted on in this session of Congress.

To delay this program until the next Congress would be a serious setback in your, and our, efforts to preserve our Nation's waters.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., September 28, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of March 23, 1970, transmitting copies of House Report 91–917 by the Committee on Government Operations, entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution." We have reviewed the report and have a number of comments on the recommendations. I wish to express at the outset our gratification that the committee has been addressing the vital issues of protecting our waterways and wetlands and the need to strengthen the use of existing authorities as one means of dealing more effectively with the developments that are threatening these resources.

It is through the dumping of refuse and the destruction and other modification of estuarine wetlands under Corps of Engineers permits that much damage has been done in the past. Action by the Corps of Engineers within its existing authorities would go far toward stopping further environmental damages. We believe that the recommendations of the committee should be implemented. and we are pleased to note that the Corps of Engineers has already taken a number of steps to accomplish this through revised regulations and procedures.

Our comments on the specific recommendations are as follows:

RECOMMENDATIONS 1 AND 2

The report states that the Corps of Engineers should "increase its consideration of the effects which the proposed work will have, not only on navigation, but also on conservation of natural resources * * *." We agree wholeheartedly with this emphasis, and with recommendation 1 regarding instructions to the district engineers to increase their emphasis on how the proposed work will affect the environment. We note that the Corps of Engineers is in the process of making substantial revisions in its procedures to accomplish this.

Recommendation 2 places needed emphasis on a problem we have often experienced in dealing with environmental issues—the burden of proof has been usually borne by those who are concerned about stopping a project to prevent or mitigate environmental damage. We share the committee's view that the burden of proof should be shifted to the permit applicant to demonstrate that his work will not have an undue effect on the environment. We think the environmental statements required by the National Environmental Policy Act will go a long way towards shifting this burden.

The Department of the Interior has made its expertise in a variety of environmental areas available to other agencies, including the Corps of Engineers. We have had specific talks with the corps on the makeup of revised procedures regarding what data and analyses the permit applicant should present to assess the environmental impact of his proposed work. More recently, we reviewed proposed regulations developed by the corps in this regard.

We were pleased to note in the corps press release of May 19, 1970 (a copy of which is enclosed), that proposed regulations will require submission of more complete information from applicants for permits to construct outfall works and dredge and fill projects. We agree that the information required of applicants for outfalls will be very useful in evaluating the environmental impact of such projects. The information to be supplied by dredge and fill applicants on the areas to be affected and the type and location of proposed structures will be helpful. However, as we have previously commented to the corps, more qualitative information should be required in order to assess the environmental impact of dredge and fill projects.

We would suggest that the Corps of Engineers might revise its regulations to require that applicants for permits for significant projects prepare at the outset a full environmental evaluation of their proposed projects. This evaluation would closely resemble the environmental statements required by the National Environmental policy Act.

We are presently looking at the feasibility of developing a comprehensive inventory of all permits for work in coastal and estuarine areas. This might strengthen our capability to assess the cumulative impact of all such work and the trends in development. A better understanding of these factors would help reviewing agencies identify and predict in advance the areas where dredge and fill and other work requiring a corps permit would have a significant impact on water quality or other resources.

RECOMMENDATION 3

The committee recommends a revision in corps regulations to reduce the importance of harbor lines with respect to decisions on applications for permits for work shoreward in navigable waters from harbor lines and to require that permits issued for such work be subjected to such conditions as the corps deems necessary to protect the public interest. The committee amplifies the latter suggestion by recommending that the corps comply with the same interdepartmental review and consultation for procedures as have been used for applications for permits for similar work in waters where harbor lines are not established.

We are pleased that the corps has issued revised regulations to implement the committee's recommendation, and we concur with the corps' actions. A copy of these regulations is enclosed for your convenient reference.

RECOMMENDATION 4

We share the view of the committee that the public interest should be fully explored in approving landfill, dredging or other work in navigable waters or wetlands. The public hearing process can be very valuable in that regard, and we concur with recommendation 4 (*a*) and (*b*) regarding revision of the Corps regulations to encourage use of public hearings and full recording of recommendations and objections on a particular project. It is our view that the revised regulations discussed in the corps May 19 press release will satisfy this recommendation.

RECOMMENDATION 5

This recommendation concerns provision by an applicant of full information on the "nature, composition, amount and degree of treatment of wastes which will be discharged from the outfall * * * " and consultation with this Department. We concur fully with this recommendation and are pleased to note the revised regulations proposed by the corps in this regard. This would greatly facilitate compliance with the certification procedures under section 21 of the Water Quality Improvement Act of 1970, wherein the State water pollution control agencies (or, in some cases, the Department of the Interior) must certify that a proposed project under a Federal license or permit meets applicable water quality standards.

The Department of the Interior has consulted with the corps on an ad hoc basis for some time concerning what information is necessary for assessing the impact of waste discharges. The Department commented to the corps during development of its revised procedures, and we believe the revisions proposed by the corps are appropriate.

RECOMMENDATIONS 6 AND 7

We agree with the committee that section 13 of the River and Harbor Act, "the Refuse Act," constitutes a valuable, and hitherto little used, device for enforcing pollution abatement measures. The Department has been meeting with the corps to determine the most effective means in which we can assist in enforcing this act with respect to pollution. The Federal Water Quality Administration regional directors have been asked to provide all possible assistance in making field surveys and other actions attendant to prosecutions under this act.

As you are aware, we are also supporting amendments to the Federal Water Pollution Control Act to strengthen our pollution abatement capabilities, through increasing the scope of the water quality standards program and authorizing a penalty of up to $10,000 a day for violating the standards.

RECOMMENDATION 8

We concur with the intent of this recommendation to increase the Government's capability to clean up refuse and other pollutants in navigable waters and obtain reimbursement of the costs from dischargers. This would, of course, necessitate appropriate congressional action. As a Federal department with the primary responsibilities for water pollution control and other environmental protection, the Department of the Interior would want to cooperate with any agencies in this action, similar to arrangements that have been made between this Department and the Department of Transportation in cleaning up oil spills under the Water Quality Improvement Act. We believe it will be appropriate for the Department of the Interior to review the methods proposed for any such cleanup program, to assure that adverse water quality impacts were avoided.

The Corps of Engineers might be particularly concerned with cleanup activities relating to projects under corps permits in navigable waters or wetlands. On the side of preventing degradation, the corps might require that piers or other structures built under corps permits be maintained in a suitable condition when in use and then removed when the period of use is over.

We appreciate the opportunity to comment on the committee's report and recommendations. Should you require further information or comment, please let us know.

Sincerely yours,

DAVID D. DOMINICK,
Commissioner.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 30, 1970.

Hon. STANLEY R. RESOR,
Secretary of the Army,
Washington, D.C.

DEAR MR. SECRETARY: On September 17, Mr. Robert E. Jordan III, your Special Assistant for Civil Functions, testified before our subcommittee concerning the permit program which the Corps of Engineers will soon initiate under section 13 of the Rivers and Harbors Act of 1899 (the "Refuse Act"), and how that program will relate to the national inventory of industrial wastes soon to be established by the Federal Water Quality Administration.

Mr. Jordan's excellent and candid testimony was very helpful to our subcommittee. The corps' program which he outlined demonstrates that your Department and the Corps of Engineers are providing great leadership in helping to protect our Nation's waters, not only for navigation, but also for environmental, ecological, esthetic, and water quality purposes. Many members of Congress share my belief that the corps' willingness to exercise its statutory responsibilities in a manner which helps protect our environment is truly in the public interest.

The landmark decision by the U.S. Court of Appeals for the Fifth Circuit in *Zabel* v. *Tabb*, which ruled on July 16 "that the Secretary (of the Army) can refuse on conservation grounds to grant a permit under the Rivers and Harbors Act" should encourage your Department and the Corps of Engineers to increase its emphasis on the environmental effects of its work and regulatory duties.

We applaud the outstanding professional manner in which the corps approaches its responsibilities. We are confident in the corps' ability to carry out its new permit program effectively and promptly. The corps has a great tradition of servic to the country over the years. Its future work in protecting the quality of our Nation's environment will enhance that tradition.

We have urged the President to support the supplemental appropriations for this fiscal year which the corps will need to carry out its new permit program. Enclosed is a copy of our letter to the President.

Please extend our thanks, and the appreciation of all the other members of our subcommittee, to Mr. Jordan, Gen. Frederick Clarke, and to the men and women of the Corps of Engineers, both civilian and military, who make the corps the great institution that it is.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.
GUY VANDER JAGT,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 23, 1970.

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The Corps of Engineers on July 30, 1970, announced the following new permit requirements under the 1899 Refuse Act (33 U.S.C. 407) concerning discharges into navigable waterways:

"Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been granted."

We commended the corps for announcing this important new policy and recognizing its responsibility for vigorous enforcement of the 1899 act. (See Congressional Record (daily issue) p. 8362, Aug. 14, 1970.)

Mr. Robert E. Jordan III, General Counsel for the Department of the Army and Special Assistant to the Secretary of the Army for Civil Functions, testified before our subcommittee on September 17, 1970 that the appropriation of $1 million in this fiscal year before Congress adjourns "would be a greater boost" to the corps in implementing this important environmental control program. When we learned that no official request for this sum from the administration had reached the Congress, we wrote on September 23, 1970, to the President urging him to accelerate a request for this sum in this session of Congress. A copy of your letter is enclosed for your information.

The corps' program, as outlined by Mr. Jordan. demonstrates that the corps is providing a fresh breath of leadership in helping to protect our Nation's waters, not only for navigation, but also for environmental, ecological, esthetic, and water quality purposes. Many Members of Congress share our subcommittee's belief that the corps' actions in revising its past policies to embrace fully these other factors and its expressed willingness and desire to exercise its statutory responsibilities in a manner which will help protect our environment are truly in the public interest.

In view of this congressional interest, we are distressed to learn that lawyers of Assistant Attorney General Kashiwa's Division, at a recent meeting with other Federal officials, objected to the corps issuing permits under the 1899 act to industrial dischargers and walked out of the meeting when the corps and others insisted that its programs should promptly proceed.

1. We should appreciate your providing to us a statement of the Justice Department's reasons for objecting to the corps' permit program.

One of the basic reasons why our waterways are increasingly degraded today is because of failure to stop pollutants at the source from being discharged, untreated or inadequately treated, into a waterway. Although some pollution (such as oil, hazardous substances, or pollution controlled under approved plans implementing water quality standards for interstate waters) can be controlled at the source under the Federal Water Pollution Control Act, the act is not an effective tool for source control of most forms of industrial and other pollution.

Until the House Committee on Government Operations issued its report which was prepared by our subcommittee (H. Rept. 91-917, Mar. 18, 1970) entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution," few realized that the 1899 act is an enforcement tool that fills this gap.

Section 21(b), which was added to the Federal Water Pollution Control Act by the Water Quality Improvement Act of April 3, 1970 (Public Law 91-224) and which requires that an applicant for a corps permit obtain a State certification that his discharge will be in accord with applicable water quality standards adds to the significance of the 1899 law. But until a corps permit is applied for, that section is not operative.

The landmark decision by the U.S. Court of Appeals for the Fifth Circuit in *Zabel* v. *Tabb*, which ruled on July 16 "there is no doubt that the Secretary [of the Army] can refuse on conservation grounds to grant a permit under the Rivers and Harbors Act," buttresses the corps' ability to control pollution at the source.

Vigorous enforcement of the 1899 act by the Justice Department against continuing, as well as occasional, dischargers who fail to obtain corps permits or to comply with the conditions of a corps permit, as the 1899 law requires, would certainly help to control pollution. But no one can deny that if the polluters' discharges are governed by a permit, which is issued only after full consideration of the environmental effect of the discharge and which carefully prescribes the conditions of the discharge, greater pollution control at the source will be possible.

We believe that the Justice Department should vigorously support the corps' efforts to implement its new program and require, when enforcing the 1899 law, that all persons contemplating further discharges must seek and obtain corps permits.

2. (a) Please list each case under the Refuse Act handled by your Department since January 1, 1970, in which future discharges are contemplated.

(b) Please identify on that list those cases in which the Department required or requested the discharger to seek and obtain a corps permit for future discharges.

(c) Please explain why the Department did not require or request the discharger in each of the other cases on that list to obtain such permit.

3. The Department's guidelines for litigation under the 1899 Refuse Act were issued before the corps announced its new permit policy, and therefore do not mention that the U.S. attorneys should require or request alleged dischargers to seek and obtain corps permits. Please inform us when you will revise the guidelines to include such direction to the U.S. attorneys.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 27, 1970.

Lt. Gen. F. J. CLARKE,
Chief of Engineers, Corps of Engineers,
Washington, D.C.

I

DEAR GENERAL CLARKE: Enclosed for your information are copies of two letters dated October 23, 1970, which we have sent to Chairman Train of the Council on Environmental Quality and to Director Schultz of the Office of Management and Budget in support of your efforts to carry out the corps policy announced on July 30, 1970, to require industrial dischargers of wastes to apply for a corps permit under the 1899 Refuse Act.

II

The subcommittee has written six letters to you since last May on which we have received no rely. The delay in replying is substantially hindering the work of this subcommittee. We would appreciate your prompt reply to our letters.

The six subcommittee letters are as follows:

Two letters addressed to you (dated May 13, 1970, and August 19, 1970) concerning the corps enforcement responsibilities under the 1899 act and the advisory role of the Federal Water Quality Administration in enforcement of that act.

One letter addressed to you (dated August 6, 1970) concerning corps permits issued since January 1960 to fill navigable waterways.

One letter addressed to you (dated August 24, 1970) concerning the data supplied on June 24, 1970, by the corps to us in tabular form.

One letter addressed to you (dated August 25, 1970) concerning Major General Dunn's reply of August 20, 1970, to our earlier letter.

One letter addressed to you (dated October 2, 1970) concerning 50 "known mercury dischargers."

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., October 23, 1970.

Mr. George P. Shultz,
Director, Office of Management and Budget,
Executive Office of the President, Washington, D.C.

Dear Mr. Shultz: Pursuant to the recommendations in the report issued on March 18, 1970, by the Committee on Government Operations (H. Rept. 91-917) and prepared by our subcommittee, entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution," the Corps of Engineers announced a new policy to enforce the 1899 Refuse Act as follows:

"Permits will be required for all industrial discharges into navigable waters and their tributaries. New permits will be required where existing permits were granted without adequate consideration of the quality of the effluent. Permits will also be required for current discharges into navigable waters where no permits have been granted."

This new policy is a progressive step forward in our efforts to prevent the degradation of our Nation's waterways.

Mr. Robert E. Jordan III, General Counsel of the Department of the Army and Special Assistant to the Secretary of the Army for Civil Functions, testified on September 17, 1970, before our subcommittee that the corps lacks funds and personnel to carry out this new policy promptly. He indicated that a supplemental appropriation of $4 million in this fiscal year before the 91st Congress adjourns "would be a great boost" to getting this important program off "to a running start."

We wrote on September 23, 1970, to the President urging him to accelerate the process within the executive branch of sending a budget request for this sum to the Congress. A copy of the letter is enclosed for your information.

We have since learned that the Secretary of the Army on September 19, 1970 sought OMB clearance for such a request. Although more than a month has passed since that action, the budget request still has not been transmitted to the Congress. In the meantime, full implementation of the corps' program is being delayed.

Please inform us when the OMB will clear the corps' budget request so that the Congress can consider and act upon it before adjournment of the 91st Congress. We urge that you approve and transmit the supplemental request as soon as Congress reconvenes on November 16, 1970.

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

Guy Vander Jagt,
Ranking Minority Member, Conservation and Natural Resources Subcommittee.

[Note.—The letter to the President referred to above is printed on pp. 135–1369 of this appendix.]

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., October 23, 1970.

Mr. Russell E. Train,
Chairman, Council on Environment Quality,
Washington, D.C.

Dear Mr. Train: The subcommittee understands that the Corps of Engineers' new policy of full enforcement of the 1899 Refuse Act, which it announced on July 30, pursuant to our recommendations, is not yet being carried out because it is still under review at two levels. First, the Office of Management and Budget has since September 19, 1970, not cleared the corps' budget request to finance the new program. Second, your Council has not yet completed its effort to reconcile the progressive corps policy with the negative guidelines of the Justice Department.

The corps' new program demonstrates that it is providing a fresh breath of leadership in helping to protect our Nation's waters, not only for navigation, but also for environmental, ecological, esthetic, and water quality purposes. Many Members of Congress share our belief that the corps' actions in revising its past policies to embrace fully these other factors and its expressed willingness and desire to exercise its statutory responsibilities in a manner which will help protect our environment are truly in the public interest. But to be effective, it must be activated.

In support of the corps' request for funds to finance the new program, we have today written to OMB Director George P. Schultz, urging that OMB approve and transmit the corps' budget request to the Congress as soon as it reconvenes on November 16. A copy of that letter and its enclosure are attached.

We wrote to you on August 19, 1970, concerning the Justice Department's guidelines and your own efforts to coordinate enforcement of the 1899 act with the corps, Justice, and the Federal Water Quality Administration. We hope we shall soon receive a reply to that letter.

Every day of delay in carrying out the corps' new permit program constitutes a serious setback in the Government's efforts to prevent pollution and enhance the quality of our waters.

We believe that the corps' program can and should proceed now. The Council's efforts to reconcile the Justice Department's guidelines with the corps' program can continue as the corps' program is being accomplished.

We are confident that the corps can and will carry out its new permit program effectively and promptly, now that it is armed with the landmark decision by the U.S. Court of Appeals for the Fifth Circuit in *Zabel* v. *Tabb*. The court's ruling on July 16 "that the Secretary [of the Army] can refuse on conservation grounds to grant a permit under the Rivers and Harbors Act" should encourage the corps to be ever vigilant in protecting the environment.

We therefore urge that the Council promptly "give the green light to the corps' program.

We would appreciate it if the Council's staff would brief our subcommittee's staff in the next few days concerning the new program. Our Chief Counsel, Mr. Indritz, will call or Mr. Gibbons, the Secretary to the Council, to arrange an appropriate time for such a briefing.

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

APPENDIX 7.—DEPARTMENT OF JUSTICE GUIDELINES AND RELATED MATERIALS

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 8, 1970.

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: We understand that the Assistant Attorneys General for the Civil, Criminal, Land and Natural Resources, and Internal Security Divisions of the Justice Department will soon issue to the U.S. attorneys "Guidelines for Litigation Under the Refuse Act (33 U.S.C. 407)." These "Guidelines" will establish the Justice Department's enforcement policy concerning violations of the Refuse Act by industrial polluters.

We believe that these guidelines (1) are, in many respects, inconsistent with the 1899 Refuse Act; (2) indicate a lack of understanding of the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.) and the policies and practices of the Federal Water Quality Administration which administers that act; (3) are, in some cases, ambiguous; and (4) are unduly and startingly negative and discouraging toward any hope of vigorous enforcement of the act. Indeed, the "Guidelines" appear to establish a policy of nonenforcement of the 1899 Refuse Act at a time when the Corps of Engineers has most responsibly issued regulations, pursuant to the committee's recommendations (see H. Rept. 91-917, Mar. 18, 1970), concerning corps permit applications under the 1899 law, which show a great concern for our environment.

We believe that the adoption of these "Guidelines" with this policy is not in the public interest and urge that you substantially revise those guidelines.

A. Section II, paragraph 1 (p. 3) of the proposed guidelines states the Justice Department policy as follows:

"The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with State pollution abatement procedures, but rather to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant pollutor, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the pollutor has failed to comply with obligations under such procedure."

Thus, rather than state affirmatively what enforcement actions Justice will pursue under the 1899 act, this statement declares that the 1899 law is not a pollution law.

As we have often stated, no one seriously contends that the 1899 law is a "pollution abatement statute in competition with the Federal Water Pollution Control Act." Rather, the 1899 act complements that law, as we will demonstrate.

Section 13 of the act (33 U.S. Code 407) *prohibits* the throwing, discharge, or deposit of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state" into any navigable waterway or tributary thereof. It also provides that corps, and no other agency, "May *permit* the deposit" of any such material into any such waterway "provided application is made * * * *prior* to depositing such material." (Italic supplied.) Thus, under the 1899 law a person or corporation either obtains a corps permit or is in violation of this section if he deposits or discharges such material in a navigable waterway without a permit. It is that simple.

When anyone applies for such a permit after April 3, 1970, he must also obtain a certificate from the State "in which the discharge originates or will originate" (or, as appropriate, from the Secretary of the Interior). This certificate is required by section 21(b) of the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970 (Public Law 91-224; 84 Stat. 91, 108). The issuance of such a certificate provides reasonable assurance from the State or Secretary that such discharge "will be conducted in a manner which will not violate applicable water quality standards." We expect these certificates will not be granted until the State or the Secretary is satisfied that there is, in fact, a firm basis for such assurances. Thus, by enforcing section 13 of the 1899 law, and requiring each violator to apply for a corps permit, the Justice Department will trigger the requirement of section 21(b) of the Federal Water Pollution Control Act. In the absence of such an application for a permit, section 21(b) will not apply. Further, applicants for corps permits must also comply with its new regulations which are designed to protect our environment.

B. The policy statement specifically states (Section II, paragraph 1, p. 3) that "significant discharges * * * of a *continuing nature* resulting from the ordinary operations of a manufacturing plant * * * *pose the greatest threat to the environment.*" But it then says: "—but it is precisely this type of discharge that the Congress *created the Federal Water Quality Administration to decrease or eliminate.*" (Italic supplied.) Accordingly, the policy statement of your Department concludes that:

> "* * * It is to the programs, policies, and procedures of that agency *that we shall defer* with respect to the bringing of actions under the Refuse Act. *Therefore, in order that we might coordinate our litigation with the programs of the Federal Water Quality Administration, civil and criminal actions against manufacturing plants which continuously discharge refuse into the navigable waters of the United States are not among the types of actions which the U.S. attorneys may initiate on their own authority.*" (Italic supplied.)

Under the procedures set forth in section III, paragraphs 3 to 5 (page 6) of the guidelines, the U.S. attorney cannot, without prior approval, initiate (1) a civil action "where the defendant is or has been a party to an administrative proceeding which has been or is being conducted by "FWQA, or (2) a civil or criminal action under the act against " * * * any person acting pursuant to a *license*" from a State or political subdivision thereof, or (3) a civil or criminal action under the law where the discharger's unlawful activity "is the subject of abatement litigation or criminal prosecution" begun by a State or political subdivision thereof.

We believe that this policy and procedure are unwarranted for the following reasons:

First, neither the creation of the FWQA, nor the institution of some type of proceedings under the Federal Water Pollution Control Act affects or limits the requirements of the 1899 act mentioned above. Regardless of what actions FWQA takes against a polluter, it cannot relieve the polluter of the obligation to obtain a corps permit under the 1899 law or the duty of the United States "to vigorously prosecute" (33 U.S.C. 413) all violators of that law.

The Committee on Government Operations recently pointed out, in its report of March 18, 1970 (H. Rept. 91-917, p. 16), entitled "Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution," that the Federal Water Pollution Control Act specifically states (33 U.S.C. sec. 466k) that it shall not be construed as (1) superseding or limiting the functions, under any law * * * of any other officer or agency of the United States, relating to water pollution, or (2) affecting or impairing the provisions of * * * sections 13 through 17 of the River and Harbor Act of 1899, as amended (i.e., the Refuse Act).

Thus, the Justice Department by administrative fiat is, by its guidelines, subjecting the permit requirements of the 1899 act to the Federal Water Pollution Control Act and allowing a polluter to continue to discharge its refuse material into a navigable waterway in violation of that law. There is no statutory or legislative history basis for this administrative policy.

We request that the Justice Department not undermine the law by adopting this unwarranted abdicative policy.

Second, the water quality standards program of FWQA applies only to interstate waters. Other navigable waters and their tributaries are not covered by that program. The guidelines do not even recognize this fact, but simply assume that all navigable waters and their tributaries are subject to FWQA's water quality standards. Even if the policy expressed in the proposed guidelines were correct, the guidelines should have stated that the U.S. attorneys should "vigorously prosecute" unlawful discharges in such waters.

Third, in many cases FWQA's sole effort to "decrease or eliminate" discharges of a "continuing nature" into an interstate water has been limited to a "conference" proceeding under section 10 of its law. This proceeding is not part of FWQA's water quality standards program. It is even difficult to classify it as an administrative proceedings because of its informal nature.

In such conferences, FWQA attempts to get all polluters to agree to a timetable under which they will abate their policies. All too often these timetables are not met and the conference is reconvened and a new delayed timetable is adopted.

FWQA, in effect, follows a practice of trading time for persuasion. The effect of that practice is illustrated by the recently reconvened Lake Erie Enforcement Conference where it was announced that 44 of our largest industries failed to redeem their earlier pledges to clean up pollution of Lake Erie according to schedule. Of these, 38 are reported to be more than a year behind, with one, Mobil Oil, 32 months behind at its Buffalo, N.Y. plant. While the Department can formalize these proceedings after a conference by holding a hearing and then requesting your Department to institute an abatement suit, it has done so only once since 1956.

Under these schedules, a polluter, even if he is expending substantial sums to abate his pollution, generally proceeds at a leisurely pace and with no threat of a court order or fine. During this period, the polluter can continue to discharge his refuse material and befoul the waterways and, if he lacks a corps permit, he will, under this Justice policy and procedure, escape the requirements of the 1899 law.

Fourth, the provision of the proposed guidelines (sec. III, par. 3, p. 6) which forbids a U.S. attorney from initiating, without special permission, a civil or criminal action to enforce the Refuse Act against a polluter who is conducting an activity under a license from a State or local subdivision, is so ineptly worded as to be virtually ludicrous. Under this guideline, any license issued to the polluter for any purpose whatsoever (such as a State or local license for the manufacturer to sell food to his workers in his cafeteria) would preclude the U.S. attorney from proceeding to enforce the Federal law. We fail to see any basis in law for the Justice Department to, in effect, excuse violators of a Federal law merely because they have a State or local license.

Throughout the proposed guidelines runs a highly negativist refrain which will undoubtedly tend to discourage U.S. attorneys from enforcing the act. The urgencies of stopping the dreadful pollution of our waterways should have induced your Department, on the contrary, to frame guidelines which would encourage U.S. attorneys to enforce a law designed to protect our Nation's waterways.

It is also curious that the proposed guidelines state (sec. I, par. 1) that the Refuse Act authorizes only criminal actions and civil actions for an injunction and fails to mention that it can be used also to secure reimbursement from polluters for the Government's costs in cleaning up their pollution (see *Wyandotte Trans. Co.* v. *United States*, 389 U.S. 191 (1967)).

Without attempting here to enumerate all of the deficiencies and ambiguities of these guidelines, we hope that your Department will revise these proposed guidelines to make them fulfill, rather than negate, the requirements of the 1899 law, and to encourage, rather than discourage, the enforcement of the law.

We would appreciate your early response.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF JUSTICE GUIDELINES FOR LITIGATION UNDER THE REFUSE ACT (33 U.S.C. 407)

I. SUMMARY OF STATUTE

1. This statute authorizes:

A. *A criminal action.*—to punish persons depositing refuse in the navigable waters of the United States in violation of its provisions [the penalty upon conviction, as prescribed in 33 U.S.C. 411, is "a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a antural person) for not less than 30 days nor more than 1 year, or both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction"] and /or

B. *A civil action for an injunction.*—to prevent the discharge of refuse matter in violation of its provisions. [Actions for injunctive relief are not expressly authorized by this statute, but on the basis of the decisions of the Supreme Court in *United States* v. *Republic Steel Corp.*, 362 U.S. 482 (1960) and *Wyandotte Transportation Co.* v. *United States*, 389 U.S. 191 (1967) such actions are deemed to be authorized by necessary implication.]

2. Such actions may be brought where the following conditions exist:

A. (i) The defendant has—
Thrown, discharged, or deposited;
Or caused to be thrown, discharged or deposited;
From any ship of any kind;
Or from the shore, wharf, manufacturing establishment, or mill of any kind;
Any refuse matter of any kind or description whatever (other than that flowing from streets and sewers and passing therefrom in a liquid state) into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and

(ii) The defendant is not conducting operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the U.S. officers supervising such improvement or public work; and

(iii) The defendant does not have a permit from the Secretary of the Army or the Corps of Engineers authorizing such deposit; or

B. The defendant has—
(i) Deposited:
Or caused, suffered, or procured to be deposited;
Material of any kind:
In any place on the bank of any navigable water;
Or on the bank of any tributary of any navigable water:
Where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise;
Whereby navigation shall or may be impeded or obstructed; and

(ii) The defendant is not conducting operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the U.S. officers supervising such improvement of public work; and

(iii) The defendant does not have a permit from the Secretary of the Army of the Corps of Engineers authorizing such deposit.

II. POLICY

1. The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with the State pollution abatement procedures, but rather to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant polluter, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the polluter has failed to comply with obligations under such a procedure. To this end, the instructions in section III below encourage U.S. attorneys to use the Refuse Act to punish or prevent significant discharges, which are either accidental or infrequent, but which are not of a continuing nature resulting from the ordinary operations of a manufacturing plant. Discharges of this last type, of course, pose the greatest threat to the environment—but it is precisely this type of discharge that the Congress created the Federal Water Quality Administration to decrease or eliminate, and it is to the programs, policies, and procedures of that agency that we shall defer with respect to the bringing of

actions under the Refuse Act. Therefore, in order that we might coordinate our litigation with the programs of the Federal Water Quality Administration, civil and criminal actions against manufacturing plants which continuously discharge refuse into the navigable waters of the United States are not among the types of actions which the U.S. attorneys may initiate on their own authority. Similar reasons exist for the exclusion of other types of actions which the U.S. attorneys may initiate on their own authority, and it is thus important that the U.S. attorneys read the instructions in section III below carefully, and on their own authority initiate only such actions as come clearly within the ambit of those authorized to be initiated by them. U.S. attorneys are invited to call the departmental officials referred to in paragraph 10 of section III for advice and guidance in Refuse Act actions.

2(a) Within the Department of Justice, the handling under the Refuse Act of criminal actions is the responsibility of the Criminal Division.

(b) Within the Department of Justice, the handling under the Refuse Act of civil actions involving ships or vessels, is the responsibility of the Civil Division.

(c) Within the Department of Justice, the handling under the Refuse Act of all other civil actions is the responsibility of the Land and Natural Resources Division.

3. U.S. attorneys are encouraged to bring criminal actions for violations of the Refuse Act within the limitations set forth in paragraph 1 in section III below.

4. U.S. attorneys are encouraged to bring civil actions to enjoin violations of the Refuse Act within the limitations set forth in paragraph 2 in section III below.

5. U.S. attorneys shall not initiate any action not within the purview of paragraphs 1 and 2 in section III below except pursuant to an authorization from the appropriate Assistant Attorney General.

III. PROCEDURES TO BE FOLLOWED BY U.S. ATTORNEYS

1. U.S. attorneys may, without prior authorization, initiate *criminal* prosecutions or civil penalty actions to punish violations of the Refuse Act, where the following conditions exist:

(A)(i) The U.S. attorney has received evidence from the Coast Guard or Corps of Engineers, or is otherwise satisfied that he has adequate evidence to prove that the defendant has, by his actions, caused to be deposited or discharged into the navigable waters of the United States or tributaries thereof matter of the following types:

Any matter of any kind discharged from a ship or vessel of any kind [Department memo No. 376 (June 3, 1964) and supp. 1 thereto (May 24, 1966) contain pertinent instructions with respect to actions involving ships]:

Oil from any shore-based source:

Any other material (other than a continuing industrial discharge) of any kind, including but not limited to demolished buildings, dirt, slag, garbage, or finished items of manufacturer such as tires, bottles, automobiles, sinks, and refrigerators; *and*

(ii) The U.S. attorney has been advised by the local office of the Corps of Engineers that the discharge of such matter into the navigable waters was not pursuant to any permit issued by the Corps of Engineers.

2. U.S. attorneys may, without prior authorization, initiate *civil* actions to enjoin violations of the Refuse Act, where the following conditions exist:

(A)(i) The U.S. attorney has received evidence from the Coast Guard or the Corps of Engineers, or is otherwise satisfied that he has adequate evidence to prove that the defendant has, by his actions, caused to be deposited or discharged, is presently causing to be deposited or discharged, or threatens to continue to cause to be deposited or discharged, into the navigable waters of the United States, or tributaries thereof matter of the following types:

Oil:

Any other material (other than a continuing industrial discharge) of any kind, including but not limited to demolished buildings, dirt, slag, garbage, or finished items of manufacture such as tires, bottles, automobiles, sinks, and refrigerators; *and*

(ii) The U.S. attorney has been advised by the local office of the Corps of Engineers that the discharge of such matter into the navigable waters was not pursuant to any permit issued by the Corps of Engineers, *and*

(iii) The U.S. attorney has been advised by the local office of the Federal Water Quality Administration that the activities of defendant were not or are not the subject of any administrative proceeding which has been or is being conducted by the Federal Water Quality Administration, *or*

(B)(i) The U.S. attorney has received evidence from the Coast Guard or the Corps of Engineers, or is otherwise satisfied that he has evidence to prove, that the defendant has placed on the banks of a body of water material of any kind, including a pier or other structure which has deteriorated, where such material or structure, or a portion thereof, is liable to be washed into a navigable body of water, whereby navigation may be impeded or obstructed, *and*

(ii) The deposit of the material on the bank is not expressly authorized by the Corps of Engineers.

3. U.S. attorneys shall in no case, without prior authorization from the appropriate Assistant Attorney General, initiate either a criminal or civil action under the Refuse Act against a State, county, or municipality, or any other political subdivision of a State, or any person acting pursuant to a license from such State, county, municipality, or other political subdivision.

4. U.S. attorneys shall in no case, without prior authorization from the Assistant Attorney General for the Land and Natural Resources Division, initiate a civil action for an injunction where the defendant is or has been a party to an administrative proceeding which has been or is being conducted by the Federal Water Quality Administration.

5. U.S. attorneys shall in no case, without prior authorization from the appropriate Assistant Attorney General, initiate either a civil or criminal action under the Refuse Act where the defendant's allegedly unlawful activity is the subject of abatement litigation or criminal prosecution initiated by a State, county, municipality or other political subdivision.

6. U.S. attorneys shall in no case, without prior authorization from the Assistant Attorney General for the Internal Security Division, initiate under the Refuse Act a criminal or civil action involving a foreign vessel where it appears:

(i) That the vessel entered the territorial waters of the United States without giving notice of its entry, in violation of the regulations issued pursuant to 50 U.S.C. 191, or that the operator of the vessel violated any of the other regulations issued pursuant to 50 U.S.C. 191, or

(ii) That the vessel was engaged in fishing or fishing support activities in U.S. territorial waters in violation of 16 U.S.C. 1081.

7. A. Should a U.S. attorney wish to initiate an action not specifically authorized to be initiated by subparagraphs 1 and 2 above, or specifically directed not to be initiated by subparagraphs 3, 4, 5 and 6 above, he will,

(i) If he seeks authority to initiate a criminal action, forward a report to the Assistant Attorney General for the Criminal Division showing the existence of the necessary elements for action, and requesting authority to bring the suit, *or*

(ii) If he seeks authority to initiate a civil action for an injunction, forward a report to the Assistant Attorney General for the Land and Natural Resources Division showing the existence of the necessary elements and requesting authority to bring the suit.

8. A. Since citizens who supply information relating to violations of the Refuse Act may be entitled to be paid one half of the fine collected upon conviction for such violation, U.S. attorneys will keep records of all actions initiated pursuant to information supplied by citizens, keeping in mind that they may be called upon to recommend to the court for or against payment of bounties.

B. Where a U.S. attorney is advised by a citizen of an alleged violation of which he already has notice, he shall promptly so advise the citizen.

C. Citizens who in general terms inform the United States Attorney of Refuse Act violations should be advised that they can be eligible to receive the bounty provided for under the act only upon their supplying specific information concerning the alleged violations, which information is either used as the basis for a criminal complaint or in the trial of the case, and results in a conviction and the levying of a fine.

D. The authorizations to initiate action, and the limitations thereon, set forth in subparagraphs 1, 2, 3, 4, 5 and 6 above apply to actions for violations reported by citizens, as well as to actions based on information obtained from official and other sources.

9. U.S. attorneys should take no position with respect to, or seek to intervene or appear as amicus curiae, in any qui tam actions which may be brought under the supposed authority of the Refuse Act.

10. A. Copies of all complaints, pleadings, and other papers filed by U.S. attorneys in criminal actions under the Refuse Act initiated by them pursuant to paragraph 1 above shall be sent to the Assistant Attorney General, Criminal Division, Department of Justice, Washington, D.C. All telephonic inquiries relating to criminal prosecutions under the Refuse Act should be directed to Chief, Administrative Regulations Section, Criminal Division, FTS 202 737 2676.

B. Copies of all complaints, pleadings and other papers filed by U.S. attorneys in civil actions under the Refuse Act initiated by them pursuant to paragraph 1 above, which actions involve ships or vessels, shall be sent to the Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. All telephonic inquiries relating to civil actions under the Refuse Act involving ships or vessels should be directed to the Chief, Admiralty and Shipping Section, Civil Division, FTS 202 737 3476.

C. Copies of all complaints, pleadings and other papers filed by U.S. attorneys in all other civil actions initiated by them pursuant to paragraph 2 above shall be sent to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. All telephonic inquiries relating to such civil actions should be directed to the Chief, General Litigation Section, FTS 202 737 2705.

D. All inquiries relating to violations of the Refuse Act by ships which may also be violating the provisions of 50 U.S.C. 191 or 16 U.S.C. 1081 (see paragraph 6 above) shall be directed to the Assistant Attorney General, Internal Security Division, Washington, D.C. Telephonic inquiries should be directed to the Criminal Section, Internal Security Division, FTS 202 737 2370.

E. The addresses and telephone numbers of the regional offices of the Federal Water Quality Administration, and the district offices of the Corps of Engineers and of the Coast Guard, are attached as Appendix 1. U.S. attorneys shall be responsible for coordinating their activities, and cooperating, with these offices in initiating actions pursuant to paragraphs 1 and 2 of this section.

SHIRO KASHIWA,
Assistant Attorney General.

Land and Natural Resources Division.
WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.
Civil Division.
WILL R. WILSON,
Assistant Attorney General.
Criminal Division.
J. WALTER YEAGLEY,
Assistant Attorney General.
Internal Security Division.

[Approved July 10, 1970.]

APPENDIX 1

A. FEDERAL WATER QUALITY ADMINISTRATION REGION OFFICES

Northeast Region, FWQA, room 2303, John F. Kennedy Federal Office Building, Boston, Mass. 02203, Telephone: (617) 223-7210.

Middle Atlantic Region, FWQA, 918 Emmet Street, Charlottesville, Va. 22901, Telephone: (703) 296-1376.

Southeast Region, FWQA, Suite 300, 1421 Peachtree Street, NE, Atlanta, Ga. 30309, Telephone: (404) 526-5737.

Ohio Basin Region, FWQA, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 871-6200.

Northwest Region, FWQA, room 570—Pittock Block, Portland, Oreg. 97205, Telephone: (503) 226-3915.

Great Lakes Region, FWQA, room 410, 33 East Congress Parkway, Chicago, Ill. 60605, Telephone: (312) 828-5250.

Missouri Basin Region, FWQA, 911 Walnut Street, room 702, Kansas City, Mo. 64106, Telephone: (816) 374-5493.

South Central Region, FWQA, third floor, 1402 Elm Street, Dallas, Tex. 75202, Telephone: (214) 749-2161.

Southwest Region, FWQA, 760 Market Street, San Francisco, Calif. 94102, Telephone: (415) 556-5876.

B. Corps of Engineers Division and District Offices

U.S. Army Engineers Division, Lower Mississippi Valley, Corner Crawford and Walnut Streets, P.O. Box 80, Vicksburg, Miss. 39180, Telephone duty hours—(601) 636-1311, nonduty hours—(601) 635-9357.

U.S. Army Engineers District, Memphis, 668 Federal Office Building, Memphis, Tenn. 38103, Telephone duty hours—(901) 534-3221, nonduty hours—(901) 397-7501.

U.S. Army Engineers District, New Orleans, P.O. Box 60267, Foot of Prytania Street, New Orleans, La. 70160, Telephone duty hours—(504) 865-1121, nonduty hours—(504) 865-1041, (504) 861-2203.

U.S. Army Engineers District, St. Louis, 906 Olive St., St. Louis, Mo. 63101. Telephone duty hours—(314) 368-2817, nonduty hours—(314) 726-4735.

U.S. Army Engineers District, Vicksburg, P.O. Box 60, U.S. postoffice and courthouse, Vicksburg, Miss. 39180, Telephone duty hours—(601) 636-1311, nonduty hours—(601) 636-7111.

U.S. Army Engineers Division, Missouri River, P.O. Box 103 Downtown Station, USPO & Courthouse, 215 North 17th Street, Omaha, Nebr. 68101, Telephone: duty hours—(402) 221-1221, nonduty hours—(402) 453-0202.

U.S. Army Engineers District, Kansas City, 700 Federal Office Building, 601 E. 12th Street, Kansas City, Mo. 64106, Telephone: duty hours—(816) 374-3896, nonduty hours—(913) 649-6086.

U.S. Army Engineers District, Omaha, 7410 U.S. postoffice and courthouse, 215 North 17th Street, Omaha, Nebr. 68102. Telephone: duty hours—(402) 221-1221, nonduty hours—(402) 453-0202.

U.S. Army Engineers Division, New England, 424 Trapedo Road, Waltham, Mass. 02154, Telephone: duty hours—(617) 894-2400, nonduty hours—(617) 894-2404.

U.S. Army Engineers Division, North Atlantic, 90 Church Street, New York, N.Y. 10007, Telephone: duty hours—(212) 264-3311, nonduty hours—(212) 269-2491.

U.S. Army Engineers District, Baltimore, P.O. Box 1715, 31 Hopkins Plaza, Baltimore, Md 21203, Telephone: duty hours—(301) 962-3311, nonduty hours—(301) 828-5195.

U.S. Army Engineers District, New York, 26 Federal Plaza, New York, N.Y. 10007, Telephone: duty hours—(212) 264-3311, nonduty hours—(212) 264-3311.

U.S. Army Engineers District, Norfolk, Fort Norfolk, 803 Front Street, Norfolk, Va. 23510, telephone: duty hours—(703) 625-8201, nonduty hours—(703) 622-7043.

U.S. Army Engineers District, Philadelphia, U.S. Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106, telephone: duty hours—(215) 597-3311, nonduty hours—(215) 649-5702.

U.S. Army Engineers Division, North Central, 536 South Clark Street, Chicago, Ill. 60605, telephone: duty hours—(312) 353-6385, nonduty hours—(312) 646-2183.

U.S. Army Engineers District, Buffalo, 1776 Niagara Street, Buffalo, N.Y. 14207, telephone: duty hours—(716) 876-5454, nonduty hours—(716) 876-5454.

U.S. Army Engineers District, Chicago, 219 South Dearborn Street, Chicago, Ill. 60604, telephone: duty hours—(312) 353-6406, nonduty hours—(312) 646-2183.

U.S. Army Engineers District, Detroit, Post Office Box 1027, 150 Michigan Avenue, Detroit, Mich. 48231, telephone: duty hours—(313) 963-1261, nonduty hours—(313) 568-2840.

U.S. Army Engineers District, Rock Island, Clock Tower Building, Rock Island, Ill. 61201, telephone: duty hours—(309) 788-6361, nonduty hours—(309) 762-0658.

U.S. Army Engineers District, St. Paul, 1210 U.S. Postoffice and Customhouse, St. Paul, Minn. 55101, telephone: duty hours—(612) 725-7506, nonduty hours—(612) 941-2060.

U.S. Army Engineers District, Lake Survey, 630 Federal Building and U.S. Courthouse, Detroit, Mich. 48226, telephone: duty hours—(313) 226-6161, nonduty hours—(313) 568-2840.

U.S. Army Engineers Division, North Pacific, 220 Southwest Eighth Street, Portland, Oreg. 97209, telephone: duty hours—(503) 226-3361, nonduty hours—(503) 224-3275.

U.S. Army Engineers District, Alaska, Post Office Box 7002, Anchorage, Alaska 99501, telephone: duty hours—(907) 752-9114, nonduty hours—(907) 279-1132.

U.S. Army Engineers District, Portland, Post Office Box 2946, 2850 Southeast 82d Avenue, Portland, Oreg. 97208, telephone: duty hours—(503) 771-4441, nonduty hours—(503) 771-1305.

U.S Army Engineers District, Seattle, 1519 Alaskan Way, South Seattle, Wash. 98134, telephone: duty hours—(206) 682-2700, nonduty hours—(206) 682-2700

U.S. Army Engineers District, Walla Walla, Building 602, City-County Airport, Walla Walla, Wash. 99362, telephone: duty hours—(509) 525-5500, nonduty hours—(509) 525-3178.

U.S. Army Engineers Division, Ohio River, Post Office Box 1159, 550 Main Street, Cincinnati, Ohio 45201, telephone: duty hours—(513) 684-3001, nonduty hours—(513) 561-3758.

U.S. Army Engineers District, Huntington, Post Office Box 2127, 502 Eighth Street, Huntington, W.Va. 25721, telephone: duty hours—(304) 529-2318, nonduty hours—(304) 525-8332.

U.S. Army Engineers District, Louisville, 830 West Broadway, Louisville, Ky. 40202, telephone: duty hours—(502) 582-5011, nonduty hours—(812) 256-3371.

U.S. Army Engineers District, Nashville, Post Office Box 1070, 306 Federal Office Building, Nashville, Tenn. 37202, telephone: duty hours—(615) 242-8321, nonduty hours—(615) 242-2769, (615) 352-2871.

U.S. Army Engineers District, Pittsburgh, 2032 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222, telephone: duty hours—(412) 644-3311, nonduty hours—(412) 366-0947.

U.S. Army Engineers Division, Pacific Ocean Building 96, Fort Armstrong, Honolulu, Hawaii 96813, telephone: duty hours—(808) 40-0531, nonduty hours—(808) 5432-033.

U.S. Army Engineers District, Honolulu, Building 96, Fort Armstrong, Honolulu, Hawaii 96813, telephone: duty hours—(808) 403711, nonduty hours—(808) 868846.

U.S. Army Engineers Division, South Atlantic, 510 Title Building, 30 Pryor Street SW., Atlanta, Ga. 30303, telephone: duty hours—(404) 526-0111, nonduty hours—(404) 233-7837.

U.S. Army Engineers District, Charleston, Post Office Box 919, Federal Building, 334 Meeting Street, Charleston, S.C. 29402, telephone: duty hours—(803) 577-4171, nonduty hours—(803) 766-5772.

U.S. Army Engineers District, Jacksonville, Federal Building, 400 West Bay Street, Jacksonville, Fla. 32202, telephone: duty hours—(904) 791-2011, nonduty hours—(904) 389-8268.

U.S. Army Engineers District, Mobile, Post Office Box 2288, 2301 Airport Boulevard, Mobile, Ala. 36601, telephone: duty hours—(205) 473-0311, nonduty hours—(205) 473-7362.

U.S. Army Engineers District, Savannah, Post Office Box 889, 200 East Saint Julian Street, Savannah, Ga. 31402, telephone: duty hours—(912) 233-8822, nonduty hours—(912) 233-8825.

U.S. Army Engineers District, Wilmington, Post Office Box 1890, 308 Federal Building, U.S. Courthouse, Wilmington, N.C. 28401, telephone: duty hours—(919) 763-9971, nonduty hours—(919) 762-7035.

U.S. Army Engineers Division, South Pacific, 630 Sansome Street, Room 1216, San Francisco, Calif. 94111, telephone: duty hours—(415) 556-9000, nonduty hours—(415) 556-0914.

U.S. Army Engineers District, Los Angeles, P.O. Box 2711, 300 North Los Angeles St., Los Angeles, Calif. 90053. Telephone duty hours—(213) 688-5522, nonduty hours—(213) 688-5522.

U.S. Army Engineers District, Sacramento, 650 Capitol Mall, Sacramento, Calif. 95814, Telephone duty hours—(916) 449-2000, nonduty hours—(916) 452-1535.

U.S. Army Engineers District, San Francisco, 100 McAllister Street, San Francisco, Calif. 94102. Telephone duty hours—(415) 556-9000, nonduty hours—(415) 556-3660.

U.S. Army Engineers Division., Southwestern, 1114 Commerce Street, Dallas, Tex. 75202. Telephone duty hours—(214) 748–5611, nonduty hours—(214) 526–5007.

U.S. Army Engineers District, Albuquerque, P.O. Box 1580, 517 Gold Avenue SW., Albuquerque, N. Mex. 87103. Telephone duty hours—(505) 843-0311, nonduty hours—(505) 298–4556.

U.S. Army Engineers District, Fort Worth, P.O. Box 17300, 819 Taylor Street, Fort Worth, Tex. 76102. Telephone duty hours—(817) 334-3011, nonduty hours—(817) 451–4420.

U.S. Army Engineers District, Galveston, P.O. Box 1229, Galveston, Tex. 77550. Telephone duty hours—(713) 763-1211, nonduty hours—(713) 762-0314.

U.S. Army Engineers District, Little Rock, P.O. Box 867, 700 W. Capitol, Little Rock, Ark. 72203. Telephone hours—(501) 372-4361, nonduty hours—(501) 372-2011.

U.S. Army Engineers District, Tulsa, P.O. Box 61, 224 South Boulder, Tulsa, Okla. 74103. Telephone duty hours—(918) 584–7151, nonduty hours—(918) 587-0311.

C. COAST GUARD DISTRICT OFFICES

Twelfth Coast Guard District, 630 Sansome Street, San Francisco, Calif. 94126, duty officer: (415) 556–5500.

Thirteenth Coast Guard District, 618 2d Avenue, Seattle, Wash. 98104, duty officer: (206) 624–2902.

Fourteenth Coast Guard District, 677 Ala Moana Blvd., Honolulu, Hawaii 96813, duty officer: (Hono) 588–841 (commercial only), Autovon (315) 732–4800 Drop 223.

Seventeenth Coast Guard District, P.O. Box 3–5000, Juneau, Alaska 99801, duty officer: (907) 586–7340 (commercial only).

First Coast Guard District, J. F. Kennedy Federal Bldg., Government Center, Boston, Mass. 02203, duty officer: (617) 223–3645.

Second Coast Guard District, Federal Building, 1520 Market Street, St. Louis, Mo. 63103, duty officer: (314) 622–4614.

Third Coast Guard District, Governors Island, New York, N.Y. 10004, duty officer: (212) 264–4800.

Fifth Coast Guard District, Federal Bldg. 431 Crawford Street, Portsmouth, Va. 23705, duty officer: (703) 393-6081.

Seventh Coast Guard District, room 1018, Federal Bldg., 51 SW. 1st Avenue, Miami, Fla. 33130, duty officer: (305) 350–5611.

Eight Coast Guard District Customhouse, New Orleans, La. 70130, duty officer: (504) 527–6225.

Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199, duty officer: (216) 522–3983.

Eleventh Coast Guard District, Heartwell Bldg., 19 Pine Avenue, Long Beach, Calif. 90802, duty officer: (213) 437–2944 (FTS) (213) 437–2941 (commercial).

THE CONSERVATION FOUNDATION,
Washington, D.C., July 15, 1970.

Hon. SHIRO **KASHIWA**,
Assistant Attorney General, Department of Justice, Lands and Natural Resources Division, Washington, D.C.

DEAR MR. KASHIWA: As I am sure you recognize, the policies of the Justice Department have a profound impact on the Nation's response to environmental degradation. Among the most important duties of the Department in this regard is its role in enforcing Federal laws against pollution. The 1899 Refuse Act is one such law that U.S. attorneys are specifically charged to enforce. It is commonly considered to be a potentially strong and vital tool to help insure compliance with the Nation's water quality program and in the enforcement of key provisions of the Water Quality Improvement Act of 1970.

We were, therefore, concerned to read your letter of June 2, 1970, to Congressman Henry Reuss expressing the Department's policy toward the use and enforcement of the Refuse Act. The policy of this letter has been subsequently detailed by the Department in its Guidelines for Litigation under the Refuse Act, issued to all U.S. attorneys on June 15, 1970. These guidelines appear to ignore the statutory mandate of the U.S. attorneys to "vigorously prosecute" violations of the Refuse Act and to neglect the complementary role of the act in enforcing

State water quality programs approved by the Federal Water Quality Administration.

In your letter to Congressman Reuss, answering certain questions about the 1899 Refuse Act, you state that:

"It would be patently poor prosecutive judgment as well as lacking in common sense to bring prosecutive action under the Refuse Act where such enforcement activity would have a disruptive or devitalizing effect upon programs designed or approved by the Federal Water Quality Administration * * *"

You then state that you would not seek injunctions against persons discharging refuse in U.S. navigable waters where it would "disrupt" Federal water pollution programs or where it would be "duplicative of such action as the State may have initiated to abate the same source of pollution." Your letter further notes that:

"It would not be in the genuine interest of the Government to bring an action under the Refuse Act to secure a criminal sanction against a company who admittedly is discharging refuse in the navigable waters of the United States, but which, pursuant to a program being conducted by the Federal Water Quality Administration, is spending significant amounts of money to secure abatement of that pollution."

This new policy of the Justice Department has been formalized in its "Guidelines for United States Attorneys" in several complex ways.

U.S. attorneys may not initiate civil and criminal actions under the Refuse Act against "manufacturing plants which continuously discharge refuse" into U.S. navigable waters.

U.S. attorneys may not initiate injunctive actions under the act wherever the activities of the defendant have been or are subject to "any administrative proceeding" of the FWQA.

Furthermore, U.S. attorneys may not initiate any criminal or civil action "against a State, county, or municipality, or any other political subdivision of a State, or any person acting pursuant to a license from such State, county, municipality, or other political subdivision."

Only if U.S. attorneys obtain prior Justice Department approval, in most cases from two separate divisions in Washington, can they avoid these extremely broad exceptions. Such clearance by U.S. attorneys is neither specified by the act nor heretofore required by the Department.

[NOTE.—Assistant Attorney General Shiro Kashiwa's letter of June 2, 1970, to Chairman Reuss is printed in appendix 8 of this hearing record, pp. 175–177.]

We question whether by the above policy the Department recognizes the importance of the Refuse Act, its enforcement mandate to U.S. attorneys, and the act's critical role in providing effective remedies against violation of federally approved State water quality standards.

The Refuse Act generally requires that a person dumping "refuse" into navigable waters of the United States must first obtain a permit from the Corps of Engineers. The term "refuse," which does not include municipal sewage, has been broadly construed by the courts and the Department of Justice to include oil, gasoline, other chemical pollutants, and even hot water. It is one of the apparent strengths of the Refuse Act that U.S. attorneys are specifically directed to "vigorously prosecute" any violators and then to report the action taken to the U.S. Attorney General.

Since passage of the 1899 Refuse Act, Congress has passed no law that does anything but continue and expand its application. The corps now uses its permit authority to cover broad environmental effects on U.S. navigable waters. The National Environmental Policy Act of 1970 simply reinforces this corps jurisdiction. And it is highly significant that the Federal Water Pollution Control Act specifically states that where pollution is concerned the Refuse Act and its enforcement provisions are not to be affected or impaired.

We recognize that the Refuse Act does not itself constitute a water pollution control program. Rather it is a means by which Federal and State water quality programs can be enforced. Moreover, the Water Quality Improvement Act of 1970 removes any doubts about application of Refuse Act permits to water pollution abatement. Its language makes clear the intention that it be applied to federally approved State water quality programs in a vital, complementary fashion.

Section 21(b) of the Water Quality Improvement Act requires that any applicant for a Federal permit "which may result in any discharge into the navigable waters of the United States" must provide the permitting agency with a certificate from the appropriate State or interstate agency that the proposed activity will not violate applicable water quality standards. In general, only after such certification is given may the Federal permitting agency grant a permit.

The central role of the Refuse Act here is obvious; if no permit is required by the Corps of Engineers, then the guarantees of section 21(b) cannot be applied. This result would effectively vitiate the strong water pollution provisions of the Water Quality Improvement Act.

The corps, of course, is not in a position to require Refuse Act permits if the Justice Department does not prosecute those discharging refuse without permits, or those violating the conditions of the permits.

It should be clear that the Corps of Engineers can use its permit authority under the Refuse Act in a positive, managerial sense to see that the applicant abides by applicable State or interstate water pollution control regulations. If the applicant is, in your words, "a company which admittedly is discharging refuse into navigable waters," then the water quality certificate now required would specify the appropriate pollution abatement schedule necessary to comply with applicable water quality standards. The permit given by the corps would never need to be a "license to pollute" since it would require compliance with the abatement schedule. Violation of this State or interstate schedule would, under section 21 of the Water Quality Improvement Act, require revocation of the corps permit.

This same section makes clear that Federal permits are to require compliance with the purposes of the Federal Water Pollution Control Act, as amended, even "in the case of any activity which will affect quality but for which there are no applicable water quality standards." The importance of this mandate to use the Refuse Act has been highlighted recently by the revelation that mercury has been continuously dumped by manufacturers in the Nation's rivers and lakes. The dreadful poisonous effects of these actions on aquatic life and man is now known to us all, but questions have been raised as to whether the mercury dumping that has occurred is clearly or immediately prohibited by applicable water quality standards. Fortunately, section 21 of the Water Quality Improvement Act makes this uncertainty irrelevant with respect to enforcement of the Refuse Act; mercury dumping in U.S. navigable waters can be simply stopped by the Corps of Engineers. But here the policy of the Justice Department is crucial. Surely U.S. attorneys should be allowed to invoke the injunctive and criminal remedies of the Refuse Act, and do so quickly, whether or not the discharge is of a "continuous" nature.

Section 21 of the Water Quality Improvement Act is, therefore, designed to ensure compliance with the Nation's anti-pollution policies and applicable water quality standards through various existing mechanisms. It clearly states that "nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with applicable water quality standards."

For the reasons stated, the Refuse Act is wholly consistent with the Federal water quality program. We believe that a legal policy based on any other construction would result in a national water pollution effort shorn of a most vital enforcement tool.

We have had many inquiries from citizens and conservation groups about the effectiveness of the Refuse Act and asking why U.S. attorneys do not use it more extensively. In the last year, however, we have noted that U.S. attorneys have attended more to the act, and after passage of the Water Quality Improvement Act it appeared that this trend could accelerae. Now we are concerned at the signs that the Department of Justice would limit the initiative of U.S. attorneys in enforcing the Refuse Act and that the Department may be ignoring section 21 of the Water Quality Improvement Act as it relates to the Refuse Act.

In order to answer our own inquiries and give a fair explanation of the new policy of the Justice Department, we would like your response to the following questions:

(1) How many actions have been filed by U.S. attorneys under the Refuse Act in the year prior to issuance of the new Guidelines?

(2) What in your opinion will be the effect of the new Guidelines on the number of actions filed by U.S. attorneys in the future?

(3) What is the statutory justification for curtailing the authority of U.S. attorneys to enforce the Refuse Act where there is:

(a) Continuous discharge of refuse in U.S. navigable waters.

(b) Discharge of refuse in U.S. navigable waters where the activity is subject to FWQA "administrative proceeding."

(c) Such discharge of refuse by a State, county, or municipality or other State subdivision.

(d) Such discharge by "any person acting pursuant to a license from such State, county, or municipality or other political subdivision."

(4) What is the effect of these restrictions on section 21 of the Water Quality Improvement Act? In what way would the Refuse Act have a "disruptive or devitalizing effect" on the requirements of this section, and can this section retain its intended effect if Refuse Act permits are not required and enforced?

We would appreciate your attention to this requested information.

Sincerely,

ARTHUR A. DAVIS,
Vice President, Operations.

DEPARTMENT OF JUSTICE,
Washington, D.C., July 27, 1970.

Mr. ARTHUR A. DAVIS,
Vice President, The Conservation Foundation,
Washington, D.C.

DEAR MR. DAVIS: I am happy to have this opportunity to answer the questions with regard to the enforcement of the Refuse Act raised in your letter of July 15, 1970, to me, and to correct the misconstruction of our guidelines for litigation under the Refuse Act which have been publicized by certain persons and which are reflected in your letter.

The first thing which you must realize is that the guidelines are instructions to the U.S. attorneys. The reason for the issuance of the guidelines was that many U.S. attorneys were unfamiliar with the provisions of the Refuse Act of 1899, and those who were familiar with it were uncertain as to how they might proceed to prosecute violations. For example, section 17 of the Rivers and Harbors Act of 1899 (of which the Refuse Act is sec. 13) states that "it shall be the duty of the U.S. attorneys to vigorously prosecute all offenders against the * * * [Refuse Act] when requested to do so by the Secretary of the Army or by any of the officials hereinafter designated * * *." It has become increasingly common, however, for possible offenses of the Refuse Act to be reported to the U.S. attorneys from sources other than those designated in the statute, and the manner of proceeding on these cases, therefore, was not clear. Very often, the reports of violations were in the most general terms—"X company is polluting"—and nothing even remotely resembling proof in support of the allegation was presented; the problem then arose how to obtain evidence to prove the charge in court.

Furthermore, the Refuse Act—that is, 33 U.S.C. 407—is in its express terms of criminal statute, and the only sanctions specifically provided for the violation of its provisions are fine and/or imprisonment. Obviously, thus to punish pollution without stopping it would not be of much aid to the environment.

The purpose of the guidelines, then, was to advise the U.S. attorneys that they might take action on violations of the Refuse Act reported from any source, to indicate to them what Federal agencies could be of assistance to them in securing proof of the allegations of discharges in violation of the Refuse Act, and to acquaint them with the fact that the Department believed that actions not merely for fines and imprisonment, but also for injunctive relief could, in appropriate cases, be brought under the Refuse Act.

To this end, the first significant change in previous procedures instituted by the guidelines was to authorize the U.S. attorneys, when they had acquired what they deemed to be evidence sufficient to prove a case, to initiate on their own initiative and authority, with no need of approval from the Department of Justice in Washington, either criminal actions to punish violations of the Refuse Act, or civil actions to enjoin such violations. Prior to the authorization to bring such actions thus conferred by the guidelines, any U.S. attorney who wished to bring any type of action under the Refuse Act involving shore-based pollution, except in New York Harbor, was required to secure the approval of the Department of Justice. Thus the statement on page 2 of your letter, that prior to the issuance of the guidelines departmental clearance for the initiation of an action under the Refuse Act was not required, simply is not correct, and the guidelines represent a significant decentralization of authority in the operations of the Department.

Now it is true that there are three significant areas wherein the requirement for departmental clearance was continued. These three areas are set forth in paragraph III-3, 4, 5 and the guidelines. These three exceptions embrace alleged violations of the Refuse Act by (1) State or municipalities, or persons whose actions in violation of the Refuse Act are purportedly authorized by States or municipalities; (2) persons or firms whose polluting activities are the subject of an administrative proceeding conducted by the Federal Water Quality Administration, and (3) persons or firms who are the subject of State, county, or municipal civil or criminal litigation. (A fourth exception, involving foreign vessels, is of minor consequence). In any matter falling within these three exceptions, the U.S. attorney may not initiate action on his own; instead, as required by paragraph III-7 of the guidelines, he must assemble the facts and evidence showing that a case exists, and then, after himself making the initial decision as to whether injunctive or criminal sanctions would most be in the public interest, forward the information either to the Criminal Division or to this Division to secure authorization to bring the suit.

Much of the criticism I have read of the Refuse Act litigation guidelines appears to be based on the assumption that because the U.S. attorneys may not themselves initiate three types of actions, then the Department of Justice will not initiate actions falling within these three areas. But this assumption is erroneous, and indeed could not have been arrived at by anyone willing to read the guidelines carefully: the first sentence of paragraph II-1 states:

> The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is
>
> (1) not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with State pollution abatement procedures, but rather
>
> (2) to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant polluter, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the polluter has failed to comply with obligations under such a procedure.

I have added the brackets and underlining to this quotation to facilitate its reading, since so many seem to have had difficulty in reading it in its ordinary form, and to emphasize that continuing industrial discharges are not automatically exempted from prosecution by the Department. In your letter, you stated on page 3:

"We recognize that the Refuse Act does not itself constitute a water pollution control program. Rather it is a means by which Federal and State water quality programs can be enforced.

This, I think you will agree, is substantially the same as the quoted language from our policy statement.

But to make the matter clear beyond doubt, let me here assert that where the Department is supplied by a U.S. attorney or any other source with hard evidence of a violation of the Refuse Act, and where the violation is of a type which the U.S. attorney cannot under the guidelines initiate on his own authority, this Department will authorize the initiation of the action, unless effective measures to abate that pollution are already being taken by the Federal Water Quality Administration or by a State through court action.

This brings us to your suggestion that the Corps of Engineers use its permit authority to require polluters to obtain licenses, thereby requiring them to comply with applicable water quality standards. What policies the Corps of Engineers might adopt with respect to the issuance of licenses under the Refuse Act, is, of course, a matter for the corps to decide, but I cannot agree with you that the licensing procedure you advocate would be an effective way to abate pollution. The chief defect of the plan is that it does indirectly, and requires an extra step to do, what may now be done directly and without further licensing. No person or firm at the present time is exempt from the requirement of compliance with water quality standards, where those standards have been established; and it is therefore completely unnecessary for the Federal Government to license a person's activities to subject him to those standards. Thus your statement on page 3 of your letter that "if no permit is required by the Corps of Engineers, then the guarantees of section 21(b) cannot be applied" misses the point entirely, for it supposes that the States cannot impose their own laws on their citizens except through the medium of a Federal license. The purpose of section

21(b) of the Water Quality Improvement Act is to prevent the Federal Government from licensing polluting activities which are unlawful under the laws of the State where the activities occur; it is unnecessary to bring this section into play where a Federal license has not issued and the polluting activity is therefore illegal under Federal as well as State law.

In my opinion, the policy we are pursuing is the one most calculated to obtain the maximum results from existing statutes. Since, under our guidelines, the U.S. attorneys now have considerable authority to initiate actions under the Refuse Act on their own, I do not know how many actions have been initiated by them since June 15, and I expect that it may be some time before we can have these figures. We have attempted to act promptly on the requests for authorization which have been sent in to us pursuant to the guidelines; as you may have read, we recently authorized the U.S. attorney in New Haven, Conn., to initiate actions against the city of Bridgeport and five firms within the city to enjoin their violations of the Refuse Act. We have given similar authority to the U.S. attorney in Cleveland with respect to the continuing violations of the Refuse Act committed by a chemical company. On Friday, July 24, having been supplied with evidence of violations by the Department of the Interior, we authorized the U.S. attorneys to bring actions to enjoin the discharges into the navigable waters of the United States of mercury issuing from 10 plants. Other requests for authorization are under study.

One of the most important things for you to be aware of is that the greatest limitation on our ability to bring actions under the Refuse Act is not that statute, or any other statute, or our policies thereunder, but the acquisition of substantial evidence to prove the charge. It is apparently your assumption that the Corps of Engineers has referred to the Department of Justice many alleged violations of the Refuse Act, which the Department has failed to prosecute. I think that if you will check with the Corps of Engineers, and its regional offices, you will find that in fact the U.S. attorneys have asked the Corps of Engineers to supply data or evidence with respect to many alleged violations, but with the corps, because of limitations of manpower, simply has not been able to investigate these alleged violations, or to supply the required data. Lacking proof of a violation of the Refuse Act, the U.S. attorneys cannot go to court. Improved ways of obtaining proof, and the opening up on the local level of channels of communication between the U.S. attorneys, the regional offices of the Corps of Engineers, and the local offices of the Federal Water Quality Administration, are subjects which are now under discussion. I believe that the situation will improve considerably in the near future, and that if you but observe our implementation of the guidelines, you will be more than satisfied with the actions we take.

Sincerely,

SHIRO KASHIWA,
Assistant Attorney General.

THE CONSERVATION FOUNDATION,
Washington, D.C., August 7, 1970.

Hon. SHIRO KASHIWA,
Assistant Attorney General, Lands and Natural Resources Division, Department of Justice, Washington, D.C.

DEAR MR. KASHIWA: We appreciate your response to our letter of July 15 regarding the Justice Department Guidelines for Litigation under the Refuse Act. Your letter has, indeed, clarified the Department's position.

The need to inform U.S. attorney about Refuse Act remedies is, as you explain, understandable. Certainly we agree that the Refuse Act could be used with more effect if U.S. attorneys were made more familiar with it.

Our basic difficulty, which your letter has not dispelled, is with the underlying policy of the guidelines. There is a difference between use of the Refuse Act as a supplement to the Federal and State water quality program, and its use as an enforcement tool to pursue that program.

This difference is highlighted by the statement in your reply that water quality standards can be obtained without regard to the provisions of section 21(b) of the Water Quality Improvement Act. You note that "no person or firm at the present time is exempt from the requirement of compliance with water quality standards, where those standards have been established; and it is, therefore, completely unnecessary for the Federal Government to license a person's activities to subject him to those standards." Your letter goes on to say that our recommended use of section 21(b) "misses the point entirely, for it supposes that the States cannot impose their own laws on their citizens except through the medium of a Federal license."

The policy you articulate disregards the theory behind the Federal Water Pollution Control Act; Federal leverage is required to force States to establish and implement water quality standards. Mercury dumping is only one example indicating that while States now have a water pollution permit system, they frequently neglect it. That the Federal Government should insist on such State attention to individual pollutors is consistent with current Federal water pollution policy. Therefore, section 21(b) requires States to implement their pollution controls under Federal supervision over all U.S. navigable waters, whether or not intrastate. Federal policing initiative under the Federal Water Pollution Control Act is, of course, limited to interstate pollution.

Use of Refuse Act permits under section 21(b) likewise allows quick Federal enforcement of State water quality standards through injunctive remedies, rather than under the 6-month procedures on which FWQA must rely. Where the Federal Government alone has testing facilities capable of detecting pollution, especially the toxic variety like mercury, this injunctive use of Refuse Act remedies under section 21(b) is both logical and necessary. Once corps permits were issued in accordance with section 21(b), the Federal Government would be in a position to take quick abatement action when it determines that State water quality standards were being violated in U.S. navigable waters.

We are heartened, of course, to know that the Justice Department has taken action against certain companies now dumping mercury in violation of the Refuse Act. We hope that the Department will take similar action against the unlawful discharge of other insidious, less notorious substances in the future. That such actions have been difficult to bring because U.S. attorneys lack information on Refuse Act violations should be easily remedied. It is true, as you state "that the corps, because of limitations of manpower, simply has not been able to investigate these alleged violations or to supply the required data." But although the corps does require a larger staff in its district permit offices, expertise on these matters resides with the FWQA and not the corps. Vigorous efforts of the Justice Department would seem best directed to insure optimum cooperation from the FWQA. We look forward to early and satisfactory reports of your current efforts to improve the relations between Justice and the FWQA.

We were gratified to learn that the Department will authorize actions under the Refuse Act "unless effective measures to abate that pollution are already being taken by the Federal Water Quality Administration or by a State through court action." As we observe the Department's implementation of the guidelines, we share your hope that we will be satisfied with the results.

Sincerely,

ARTHUR A. DAVIS,
Vice President for Operations.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 19, 1970.

Mr. RUSSELL E. TRAIN,
Chairman, Council on Environmental Quality,
Washington, D.C.

I.

DEAR MR. TRAIN: The Department of Justice issued on July 10, 1970, to the U.S. attorneys its "Guidelines for Litigation Under the Refuse Act (33 U.S.C. 407)." The guidelines state the following policy (p. 3):

"1. The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with the State pollution abatement procedures, *but rather to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant polluter, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the polluter has failed to comply with obligations under such a procedure* * * *." [Italic supplied.]

As you know, section 102(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, approved Jan. 1, 1970) directs all Federal agencies, including the Justice Department, to include, in all "major Federal actions significantly affecting the quality of the human environment," a detailed statement on—

> First, the environmental impact of the proposed action;
>
> Second, any adverse environmental effects which cannot be avoided should the proposal be implemented;
>
> Third, alternatives to the proposed action;
>
> Fourth, the relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity; and
>
> Fifth, any irreversible and irresistable commitments of resources which would be involved in the proposed action should it be implemented.

Before issuing this statement, such agencies must obtain the views and comments of those Federal agencies having "jurisdiction by law or special expertise with respect to an environmental impact involved."

Section 5(a) of the Council's interim guidelines of April 3, 1970 (35 F.R. 7390), defined the term "actions," for the purpose of determining whether a "detailed statement" is required, to include "policy and procedure making" activities of an agency.

We understand that—

> (a) The Department of Justice violated the requirements of section 102(C) of the act by failing to prepare and file with the Council a detailed statement concerning the policy adopted by it in the above Guidelines; and
>
> (b) The Department of Justice failed to consult with either the Corps of Engineers, the Federal Water Quality Administration, or the Council concerning the details of the above policy, the relationship of that policy to the programs of those agencies, or the environmental effect or impact of that policy.

We are greatly concerned about these failures of the Justice Department to comply with the requirements of the National Environmental Policy Act.

The Guidelines were issued, according to the Justice Department, as "instructions to the U.S. attorneys" in the handling of actions under the 1899 Refuse Act. The Guidlines authorizes U.S. attorneys to bring certain types of actions to the attention of the Justice Department to secure auhorization to bring suit under the 1899 law. Included in these are continuing violations of the act. If it were not for the above policy statement, we could understand that, for administrative purposes, such a procedure would be desirable from the standpoint of the Justice Department. But the above policy statement establishes as a fine "policy of the Department of Justice" that *no suit will be authorized* to "abate continuing sources of pollution" which are subject to some undefined, vague "proceeding conducted" by FWQA or a State.

Thus, with this firm policy stated in the guidelines, U.S. attorneys will be discouraged from submitting to the Justice Department any suit to abate continuing sources of pollution, particularly when no one knows what constitutes a FWQA or State "proceeding." The result is that the polluter gains, and the public loses.

We request the Council to review this violation with the Department of Justice and to seek the prompt rescission of this unlawfully adopted policy by that Department. Please advise when the Justice Department rescinds this policy.

Enclosed is a copy of my statement (Cong. Rec., Aug. 14, 1970, pp. H8362–8366) concerning the policy of full enforcement by the Corps of Engineers, and the policy of abdication of enforcement by the Justice Department, under the 1899 act.

II.

During the recent hearing of the Senate Air and Water Subcommittee on August 11, 1970, you stated that the Council was working with the Corps of Engineers, the Justice Department, and FWQA to formulate a "new program" to be announced in about a month concerning enforcement of the 1899 act.

We would appreciate your prompt response to the following questions and points:

1. To what extent will this "new program" differ from the full enforcement policy announced by the Corps of Engineers on July 30, 1970, mentioned in my statement of August 14 (Cong. Rec., *supra*, p. H8364)?

2. (a) Will the guidelines of the Justice Department be revised under this new program?

(b) If the answer to (a) is yes, please let us know in what ways the guidelines will be revised.

3. Since the 1899 act is administered by the corps, not by FWQA, what role do you envisage FWQA should have under (a) the corps' new policy of July 30, and (b) the "new program" to be announced?

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, August 19, 1970.

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. MITCHELL: Enclosed for your information is a copy of my letter I have today sent to the Chairman of the Council on Environmental Quality concerning the Justice Department's failure to comply with the requirements of section 102(C) of Public 91-190 in issuing its "guidelines for litigation under the Refuse Act (33 U.S. Code 407)."

Also, enclosed is a copy of my statement (Congressional Record, August 14, 1970, pp. H8362-8366) concerning the Corps of Engineers new policy of full enforcement of the 1899 act and the Justice Department's abdication of its statutory duty to enforce "vigorously" that act.

We would appreciate your early reply to our letter of July 8, 1970, concerning the guidelines.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DEPARTMENT OF JUSTICE,
Washington, D.C., August 31, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This will reply to your recent letters relating to our guidelines for litigation under the Refuse Act. It is the premise of your letters that this Department will not authorize the institution of suits under the Refuse Act to abate continuing sources of pollution. But that premise as we have already explained in our letter to the Conservation Foundation, with which letter you are familiar, is incorrect.

During the first 7 months of this year, approximately 170 cases have been referred to the various U.S. attorneys for criminal prosecution under the Refuse Act. This represents an increase of severalfold over the number of prosecutive referrals under this act for the same period of time in any prior year. Also, the Department has recently authorized civil suits against 10 companies to stop mercury pollution of lakes and rivers in seven States. Authorization has also been given for civil suits against other industrial polluters.

It is our purpose to exert our best efforts to carry out through litigation all legislative authorities which Congress has made available for the improvement of water quality and to cooperate, to the fullest extent possible consistent with this objective, with local and State officials who have the same end in view.

Sincerely,

SHIRO KASHIWA,
Assistant Attorney General.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 22, 1970.

Hon. JOHN N. MITCHELL,
Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: By letter of August 31, 1970, Assistant Attorney General Shiro Kashiwa responded to our subcommittee's letters to you concerning the Justice Department's "guidelines" for enforcing the 1899 Refuse Act (33 U.S. Code 407). His letter says that it "is the premise of" our subcommittee's letters that the Justice Department "will not authorize the institution of suits under the Refuse Act to abate continuing sources of pollution. But that premise * * * is incorrect."

That is not the "premise" of our letters. Rather, as stated in our letter to you of July 8, 1970, 2 days before your Department issued the "guidelines" to all U.S. attorneys prescribing the Department's enforcement policy concerning violations of the Refuse Act by industrial polluters," we say that the guidelines "are unduly and startlingly negative and discouraging toward any hope of vigorous enforcement of the act" by U.S. attorneys.

We have read the statement in the guidelines which say that U.S. attorneys will refer certain Refuse Act violations to Washington for departmental review and clearance. But the guidelines also contain (on p. 3) a statement of departmental policy which tells the U.S. attorneys in advance that the Justice Department will approve an action under the 1899 law "to abate continuing sources of pollution" only if the alleged violator has "been subjected to a [yet undefined] *proceeding conducted by the Federal Water Quality Administration or by a State*, or where in the opinion of the Federal Water Quality Administration the polluter has *failed to comply with obligations under such a procedure*." [Italic supplied.] We were certain then, and we are certain now, that with such a policy statement proceding and modifying all instructions found elsewhere in the guidelines, a busy U.S. attorney will not devote the time and energy needed to try to convince Washington officials that an exception to this general policy is warranted in any particular case, even though you, at the urging of Secretary of the Interior Hickel, did authorize prosecution in the recent cases of mercury pollution. We predicted that a U.S. attorney, overloaded with cases, will probably decline, citing the Justice Department policy, to file either criminal or civil actions under the 1899 law where there is a continuing violation.

For this and other reasons, we urged, in our July 8 letter, that the Justice Department "revise these * * * guidelines to make them fulfill, rather than negate, the requirements of the 1899 law, and to encourage, rather than discourage, the enforcement of the law."

Let us give you a concrete example of how our prediction is true.

Recently, several Maryland citizens, through their attorney, Mr. Hamilton P. Fox of Salisbury, Md., urged the U.S. attorney for Maryland to enforce the 1899 Refuse Act (33 U.S.C. 407) against the Mar-del Byproducts Co. of Salisbury, Md. That company is allegedly discharging shredded chicken offal and grease into a tributary of the Wicomico River. U.S. Attorney George Beall, in his letter of August 3, 1970, to Mr. Fox, replied:

"I must respectfully decline the invitation to institute a civil suit [against the Mar-del Co.] under the Refuse Act [and] we are also most reluctant to intervene in or join as amicus curiae in a *qui tam* action under authority of the Refuse Act."

In declining to institute a suit under the 1899 law, Mr. Beall invoked the Justice Department guidelines policy as follows:

"*Our office is under strict instructions to defer to State pollution abatement procedures such as those administered by the Maryland Department of Water Resources. Since an investigation of this particular violator is presently being conducted by that agency, our participation is not timely.* If the State procedures are unavailing, we can consider invocation of the assistance of the Federal Water Quality Administration." [Italics supplied.]

Thus, Mr. Beall, inhibited by the negativism of the guidelines, evidently construed them, just as we and many others in Congress and from the general public have done, to bar any action by him so long as the company's pollution was being "investigated" by a State agency. His letter plainly shows that he construed the word "proceeding" in the guidelines (p. 3) as including merely an "investigation" being conducted by the State agency.

Further, if the State investigation action is "unavailing," Mr. Beall would, under Justice's Guidelines, still not enforce the 1899 act. Rather, he would "consider invocation of assistance" of the FWQA.

Mr. Beall's strained construction of the guidelines certainly shows the need for revising the guidelines and eliminating its negative tone, and for issuing new guidelines which would encourage U.S. attorneys to carry out the statutory admonition "to vigorously" enforce the 1899 law (33 U.S.C. 413).

Mr. Kashiwa, in his August 31 letter, also said as follows:

"During the first 7 months of this year, approximately 170 cases have been referred to the various U.S. attorneys for criminal prosecutive referrals under this act for the same period of time in any prior year. Also, the Department has recently authorized civil suits against 10 companies to stop mercury pollution of lakes and rivers in seven States. Authorization has also been given for civil suits against other industrial polluters."

We also have noted the testimony by Maj. Gen. Frank P. Koisch of the Corps of Engineers on March 5, 1970, before the Senate Committee on Air and Water Pollution. He stated that "last year * * * we passed on to the Justice Department 355 [violation of the 1899 law] * * * of which 25 were denied prosecution and 236 are pending."

Our subcommittee desires to fully and correctly understand the work of your Department in handling cases under the Refuse Act. We would appreciate your cooperation in supplying the following information to us:

1. Please furnish the data requested on the attached table.
2. Please provide to us a copy of each of the complaints made against the 10 alleged mercury polluters.

We would appreciate receiving the foregoing information as rapidly as possible. If all of the data cannot be assembled and transmitted to us by October 1, 1970, please send to us whatever data you then have and forward the remainder to us as soon thereafter as possible.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

CASES REVIEWED BY, OR PENDING WITH, ANY U.S. ATTORNEY AND/OR DEPARTMENT OF JUSTICE FOR ACTION UNDER THE REFUSE ACT (33 U.S.C. 407, 411, 413)

(JAN. 1, 1970, TO ————)[1]

Alleged violator (name and address)	Place of alleged violation (city or county and State); and name of waterway	Nature of refuse material allegedly being discharged	Dates of alleged discharges	Indicate nature of discharges (C=Continuous or accompanying manufacturing operations; S=Single, occasional, accidental)	Person (or agency) who (or which) brought alleged violation to attention of U.S. Attorney or Department of Justice (name and address)
(1)	(2)	(3)	(4)	(5)	(6)

		If judicial action was initiated, please state:				
Alleged violator (name and address)	Action taken by U.S. Attorney or Department	Name of district court in which action brought	Name and number of case	If injunctive relief was sought, please describe	Present status of case (if terminated, describe how and state penalties or judgment, if any, or settlement terms)	If judicial action was not initiated, state reasons
(1)	(7)	(8)	(9)	(10)	(11)	(12)

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[1] State latest date for which information is available.

U.S. HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 23, 1970.

HON. DAVID D. DOMINICK,
Commissioner, Federal Water Pollution Control Administration, Department of the Interior, Washington, D.C.

DEAR MR. DOMINICK: The Department of Justice issued on July 10, 1970, "Guidelines for Litigation under the Refuse Act (33 U.S.C. 407)" to U.S. attorneys. These guidelines state the Justice Department policy concerning enforcement of the 1899 act as follows:

"The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with State pollution abatement procedures, but rather to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant pollutor, *or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the pollutor has failed to comply with obligations under such a procedure*" [italics supplied].

The guidelines then go on to state that, under this policy, U.S. attorneys shall not "initiate on their own authority * * * actions against manufacturing plants which continuously discharge refuse" into navigable waterways without a Corps of Engineers permit. Further, under this policy the Justice Department itself will not institute such actions where such plants are subject to "proceedings conducted" by FWQA or "by a State" or where, in the opinion of FWQA, the pollutor is complying with its "procedure."

We believe that this policy is contrary to the requirements of the 1899 act, renders meaningless the provisions of section 21(b) of the Federal Water Pollution Control Act insofar as existing waste discharges not under corps permit are concerned, and violates the spirit and intent of the latter statute.

We would appreciate your prompt response to each of the following questions and requests:

1. (a) Did the Justice Department consult with FWQA before adopting this policy?

(b) If so, what were FWQA's comments and views concerning this policy?

2. (a) Does FWQA agree with this policy?

(b) If so, why?

3. Please provide to us (a) a list of each proceeding conducted by FWQA which would apply to continuing sources of pollution; (b) a statement outlining the nature of each such proceedings; and (c) the statutory citation of authority for each.

4. Under what circumstances would FWQA consider, and so advise Justice, that since a continuing pollution source is complying "with obligations" under such a proceeding, an action to enforce the Refuse Act should not be instituted?

5. Precisely what actions by a discharger of refuse who is a continuing source of pollution do you consider to constitute compliance "with obligations" under FWQA procedure?

6. Even if such a discharger is "complying with obligations" (whatever that means) under FWQA procedure, should not the continuing discharger who lacks a corps permit be required to apply for such a permit and thereby trigger the certification procedure under section 21(b) of the Federal Water Pollution Control Act as amended on April 3, 1970 (Public Law 91-224)?

7. (a) Please provide to us a statement specifying, in detail, the procedures established by FWQA to review and comment on proposed actions by U.S. attorneys to enforce the 1899 act?

(b) Please provide to us a copy of the report form developed for this purpose.

Enclosed for your information is a copy of my floor statement in the Congressional Record (pages H6797-6798, daily issue) of July 15, 1970, concerning the Justice Department's guidelines.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., September 24, 1970.

Hon. Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in response to your letter of July 23, 1970, in which you asked certain questions concerning the recent guidelines issued by the Department of Justice concerning the enforcement of the "Refuse Act." The answers to your questions are as follows:

1. (a) Did the Justice Department consult with FWQA before adopting this policy?

No.

(b) If so, what were FWQA's comments and views concerning this policy?

See 1(a).

2. (a) Does FWQA agree with this policy?

We are in substantial agreement with the intent of the Justice Department guidelines.

(b) If so, why?

We believe that the Refuse Act should be enforced in the context of other Federal laws which also prohibit the discharge of pollutants into the navigable waterways of United States. One such Federal statute is the Federal Water Pollution Control Act, which provides for an orderly and systematic approach to the abatement of polluting discharges in compliance with water quality standards and within a reasonable time schedule.

The guidelines issued by the Department of Justice do not remove the Refuse Act from availability as an enforcement tool. Instead, they require that the total manpower resources available for enforcement of pollution control are utilized in the most effective manner. We understand their purpose to be the achievement of consistent and systematic Federal water pollution control efforts. It would be inconsistent for a U.S. attorney to bring an action, for example, against an industry which is constructing a waste treatment facility according to a schedule approved by FWQA.

3. Please provide to us (a) a list of each proceeding conducted by FWQA which would apply to continuing sources of pollution; (b) a statement outlining the nature of each such proceeding; and (c) the statutory citation of authority for each.

Two basic enforcement procedures are provided by the Federal Water Pollution Control Act (all citations are to that act). Both are applicable to continuing sources of pollution.

The first is a three-stage procedure: a conference is first held, followed by a public hearing and, if necessary, a court action.

The conference, provided for in section 10(d), is conducted informally and is a nonadversary action. The conferees are the State water pollution control agencies, interstate water pollution control agencies, if any, and the Department of the Interior. At this time, the function of the conference is to inquire into the occurrence of pollution abatable under the act, the adequacy of the measures being taken, and the nature of the delays being encountered; agreement of the conferees, if possible, is obtained on a required remedial program to abate the pollution. Following the conference, the Secretary prepares a summary of proceedings and, if appropriate, his recommendations for remedial action.

A public hearing held pursuant to section 10(f) is a formal procedure directed toward individual alleged polluters. The Hearing Board is comprised of five or more members, appointed by the Secretary of the Interior. The findings and recommendations made by the Hearing Board on the basis of the evidence presented are sent to the polluters with a stipulated time for compliance and to the State and interstate agencies.

As a last resort, court action is provided for by section 10(g). The court has jurisdiction to enter such judgment and enforcing orders as the public interest and the equities of the case may require.

The second procedure is set forth in section 10(c)(5) of the act. Under that procedure, the requirements for an enforcement conference and a statutory hearing are eliminated. Instead, the Secretary may proceed directly to court action after 180-day notice to the defendant. An informal hearing is required by regulations, to allow the defendant to present his plans, if any, for voluntarily abating the pollution.

4. Under what circumstances would FWQA consider, and so advise Justice, that since a continuing pollution source is complying "with obligations" under such a proceeding, an action to enforce the Refuse Act should not be instituted?

We believe that it would be inequitable and disruptive of Federal environmental cleanup efforts to prosecute dischargers under the Refuse Act who are conscientiously pursuing time schedules for remedial action established as a result of Federal-State water quality standards or as a result of an enforcement conference pursuant to the provisions of the Federal Water Pollution Control Act.

5. Precisely what actions by a discharger of refuse who is a continuing source of pollution do you consider to constitute compliance "with obligations" under FWQA procedures?

See answer to question 4.

6. Even if a discharger is "complying with obligations" (whatever that means) under FWQA procedure, should not the continuing discharger who lacks a corps procedure under section 21(b) of the Federal Water Pollution Control Act, as permit be required to apply for such a permit and thereby trigger the certification amended, on April 3, 1970 (Public Law 91-224)?

Yes. FWQA is cooperating with the Department of the Army to develop a program for accomplishing this.

7. (a) Please provide to us a statement specifying, in detail, the procedures established by FWQA to review and comment on proposed actions by U.S. attorneys to enforce the 1899 act.

(b) Please provide to us a copy of the report form developed for this purpose.

No procedures have yet been developed for review of referral of possible Refuse Act violations to FWQA by the Department of Justice. However, in this regard, this Department and the Department of the Army, in consultation with the Department of Justice, are developing procedures for the expeditious investigation and prompt referral of Refuse Act cases to the Department of Justice.

When those procedures are developed we will forward them to you.

Sincerely yours,

DAVID D. DOMINICK, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D.C., October 2, 1970.

HON. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has referred to me your letter of September 22, 1970, for reply with respect to the matters discussed therein under the jurisdiction of the Land and Natural Resources Division. As you know, responsibility for the enforcement of the Refuse Act is divided among three divisions: the Civil Division supervises all actions involving ships, the Criminal Division supervises all other criminal actions, and the Land and Natural Resources Division supervises all other civil actions. Copies of your letter have been sent to the Criminal and Civil Divisions for appropriate reply.

I appreciate your present realization that the spirit of the guidelines is to encourage U.S. attorneys to use the Refuse Act effectively either to punish or abate pollution. These guidelines confer upon the U.S. attorneys authority to bring actions under the Refuse Act where certain situations exist, and encourage the U.S. attorneys to submit to this office requests for authorization to bring actions where the matters are not within their own authority to prosecute. Of course, one of the consequences of the grants of authority given to the U.S. attorneys under the guidelines is that we at the departmental level are unaware of the many day-to-day decisions which the U.S. attorneys make in the implementation of their delegated responsibilities. However, we are confident that these decisions reflect the best judgment of the U.S. attorneys.

As requested in your letter, I am sending you a copy of each of the complaints filed to enjoin the discharge of mercury into the navigable waters of the United States. I am also sending you a table showing certain information with respect to the actions filed by this Division under the Refuse Act. Since all of these actions are for injunctive relief, you may assume that the dicharges involved are either continuing or very frequent. Not included in this list are the names of 30 companies against which actions are under consideration; this is in keeping with the Department of Justice policy not to announce law suits until they are actually filed.

Sincerely,

SHIRO KASHIWA,
Assistant Attorney General.

Enclosures.

[NOTE.—The complaint and settlement agreements concerning mercury polluters are set forth in appendix 9.]

LIST OF POLLUTERS OF NATION'S NAVIGABLE WATERWAYS SUPPLIED TO COMMITTEE BY THE JUSTICE DEPARTMENT

Name	D.J. number	Source	Water body	District
Allied Chemical	90-1-2-918	I	Onondaga River	Northern New York.
Cirillo Bros	90-1-2-873	CE	New York Harbor	Eastern New York.
Diamond Shamrock	90-1-2-914	I	Tennessee River, Pond Creek	Alabama.
Do	90-1-2-919	I	Delaware River	Delaware.
Geo.-Pac. Corp	90-1-2-913	I	Bellingham Bay	Western Washington.
Harshaw Chemical	90-1-2-899	U	Cuyahoga River	Northern Ohio.
IMC Chlor-Alkali	90-1-2-911	I	Penobscot River	Maine.
Marathon Battery Co	90-1-2-935	U	Foundry Cove	Southern New York.
Olin Mathieson Corp	90-1-2-915	I	Niagara River	Western New York.
Do	90-1-2-917	I	Savannah River	Southern Georgia.
Oxford Paper Co	90-1-2-920	I	Androscoggin River	Maine.
Pennwalt Chemical	90-1-2-916	I	Tennessee River	Western Kentucky.
Weyerhaeuser Co	90-1-2-912	I	Columbia River	Western Washington.

Note.—I=Interior; CE=Corps of Engineers; U=United States Attorney.

DEPARTMENT OF JUSTICE,
Washington, October 19, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and National Resources Subcommittee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: This is in further response to your letter of September 22, 1970, addressed to the Attorney General, which was forwarded to us by the Land and Natural Resources Division after that Division had prepared its reply.

We are responding to your request for information concerning criminal prosecutions under the Refuse Act of 1899 (33 U.S.C. 407, 411).

The only centralized source available for use for the information you request is from the monthly statistical reports from the U.S. attorneys' offices which are computerized. From the IBM printout of these reports, we have prepared and enclose lists of the cases pending on August 31, 1970, and those closed since the beginning of fiscal year 1970. Attached to each list is an explanation of the code numbers shown under "status" and "disposition."

You will see from these lists that as of August 31, 1970, there are 72 criminal cases which have been filed and are pending disposition, most of them awaiting either arraignment or trial. There were 92 criminal cases closed, most of them after pleas of guilty or nolo contendere. In addition to the court cases listed, there were as of August 31, 1970, 105 criminal matters pending. For obvious reasons we cannot list or comment on these while they are in the process of consideration for criminal prosecution.

We are unable to furnish all of the detailed information you requested on the tables attached to your letter because it is not available to us. Such a detailed breakdown is not included in the reports which are the source of the statistical information. However, in general, oil spills or refuse from industrial operations which contain oil or chemical wastes constitute the majority of the discharges upon which prosecutions are based. The usual practice is that the Corps of Engineers reports violations either to us or to the U.S. attorneys based on Coast Guard investigations. The Coast Guard and the Corps of Engineers receive complaints from a variety of sources, but the majority of the violations are discovered during routine Coast Guard patrols.

You will note that on the list of closed cases the disposition code, where the prosecutions were successfully concluded either by guilty or nolo contendere pleas or by a guilty verdict after trial, are shown as 361, 362, 363, 384 or 385 which indicates that the fine has not been paid. This code has been erroneously used in most cases as the court records show payment of the fines imposed. We assume that failure to show payment of the fines in the reports of disposition occurred because of the time lag between payment and the report by the court clerk to the U.S. attorneys' offices.

If we can be of further assistance, please let us know.

Sincerely,

WILL WILSON,
Assistant Attorney General.

REFUSE ACT CASES CLOSED, AUG. 1, 1970

District and name	Court No.	Disposition [1]
Alaska: Hrubik	67101	325
Georgia Southern:		
Savannah Mach	18054	363
Hunt Wesson	18046	353
Union Camp Cor	18044	363
Illinois Northern:		
Interlake Stl	68077	363
Pure Oil Corp	700069	363
Abrams C	700069	359
Gen Am Transp	700067	363
Nat Sheet Mtl	700066	363
Olinkraft Inc	700065	363
Penn Central	700062	363
Excelsior Trk	700062	363
Int Harvester	700071	353
Indiana Northern:		
Sinclair Oil	700011	362
Standard Oil	700014	342
Phillips Pipe	700015	330
Atl Richfield	700018	359
Maine:		
Mobil Oil Corp	690018	761
Resnick Oil Co	700038	761
Mobil Oil	700058	761
New Hampshire:		
Barge C	06976	763
Mobil Oil	696996	353
Mobil Oil	696997	363
New Jersey:		
Weller Oil Inc	700081	362
Wellen	700194	361
Wellen Oil Inc	700193	361
Wellen Oil Co	700224	361
Gen Ainiline	700027	361
El Dupont	700021	363
P.S.C. Trans	700020	362
Texaco Inc	700026	363
New York, Northern: Acme Oil	68118	362
New York, Eastern:		
White Rock Cor	700022	362
Consol Edison	700022	361
Commander Oil	700021	386
Investors Coll	700020	330
Van Iderstine	700024	362
Nick Bros Fuel	700245	361
Mobil Oil Co	700246	361
New York, Southern:		
Vacar Conctr	680990	361
Penn Cen Trans	690607	361
Federated Home	68574	361
Spearin & Burrow	68575	384
Cirillo Bros	68573	359
Hudson Wire Co	690767	361
Consol Edison	690603	361
Col Sand Stone	690923	361
Clark R. E	690630	351
New York, Southern—Continued		
Edwards P	690428	380
Corp of Era	690428	384
Amerada Hess	690766	361
Gulf Oil Corp	690765	361
Cirillo Term	690764	361
Oceana Term	700218	361
Ohio, Northern: Avenier Mar	700136	361
Puerto Rico:		
P R Water Res	690094	761
Esso Standard	690096	761
South Carolina, East:		
Murray W. E	690013	361
Murray Invest	690013	361
Carolina Dredg	690014	385
Tennessee, Middle:		
Statler L	14513	381
Texaco Inc	14597	761
Texas, Southern:		
Pontiac Refin	700032	761
Crown Central	700175	763
Vermont:		
Northern Oil	696630	385
Spentonbush	706653	361
Do	706652	761
Virginia, Eastern: Dryden E. F	690086	762
Georgia, Northern: Southern Rail	26402	363
Illinois, Northern:		
Lake Riv Term	700064	363
US Rwy Equip	700256	363
Material Serv	700257	363
Illinois, Eastern:		
Central Towin	690070	361
Canal Barge Co	700004	361
Indiana, Northern: Dupont Chem	700010	763
Maine:		
Flink, C. R	700062	361
Sun Oil	700063	761
Maryland: Deepwater Ter	700247	763
New Jersey:		
Howard F	700197	361
Lever Bros	700243	363
Bayonne Ind	700051	362
Howard Fuel	700022	361
New York, Eastern: Long Isl Ligh	700242	361
Oregon: Union Oil Co	700181	763
Illinois, Northern: Procter & Gam	700068	363
Indiana, Northern: Inland Steel	700016	762
Maryland: Humble Oil	700248	342
New Jersey:		
Kramer Chem	700305	361
Greenpoint Dr	700029	361
Tennessee, Western:		
Ill Cen RR	700084	363
STL-SF RR	700147	363
Vermont: Spentonbush	706631	342

[1] See following Criminal Codes for explanation of code numbers.

CRIMINAL CODES

Number	Disposition
325	Case dismissed by court.
330	Dismissed on authority received from department.
342	Dismissed without prior authority from Department because of superseding indictment or information filed.
359	Dismissed without prior authorization from Department—other reasons.
361	Sentenced after plea of guilty—fine not paid.
761	Sentenced after plea of guilty—fine paid.
362	Sentenced after plea of guilty as to part—fine not paid.
762	Sentenced after plea of guilty as to part—fine paid.
363	Sentenced after plea of nolo contendere—fine not paid.
763	Sentenced after plea of nolo contendere—fine paid.
384	Sentenced—guilty after trial by court—fine not paid.
784	Sentenced—guilty after trial by court—fine paid.
385	Sentenced—guilty after trial by jury—fine not paid.
785	Sentenced—guilty after trial by jury—fine paid.
386	Sentenced—guilty plea during trial—fine not paid.
786	Sentenced—guilty plea during trial—fine paid.
372	Decision rendered 28 USC 2255 (District 54 only).
380	Acquitted after trial by court.
381	Acquitted after trial by jury.
387	Acquitted—insanity—after trial by court.
388	Acquitted—insanity—verdict by jury.
389	Acquitted—insanity—jury trial—directed verdict.
390	Proceedings suspended indefinitely by court (proceedings continued without day, stricken with leave to reinstate, sentence deferred indefinitely).

REFUSE ACT CASES PENDING—AUG. 31, 1970

District and name	Court No.	Status[1]
Alabama, Southern:		
Bender Welding	15532	211
Illinois, Northern:		
Calumet Refin	700335	205
Pure Oil Co	700351	205
U.S. Steel	700148	211
Kay C	700148	211
Mathieson Chem	700070	211
Smith Oil & Re	700063	211
Deangeles R	700288	205
Illinois, Eastern:		
Central Towing	690070	211
Canal Barge Co	700004	211
Indiana, Northern:		
Youngstown S &	700008	211
Cities Service	700009	211
DuPont Chem	700010	211
US Steel	700012	211
Mobil Oil Co	700013	211
American Oil	700017	211
Mobil Oil Inc	700019	211
Amer Oil Co	700022	211
American Oil	700063	213
Cities Serv	700065	205
Maine:		
Gulf Oil	700060	209
Humble Oil	700061	209
Flink C R	700062	209
Sun Oil	700063	209
Texaco Inc	700064	209
Bernstein & JA	700055	209
Maryland: Deepwater Term	700247	209
Michigan, Eastern:		
Chrysler Corp	45005	209
Shell Oil Co	45006	213
Detroit E	45004	211
New Jersey:		
Distri Center	700025	209
Nat Lead Co	700195	211
Brodun I	700198	211
Vulcan Mtrl Co	700196	211
Rollins Term	700242	211
Braen Industri	700244	211
Lever Bros	700243	209
New Jersy—Continued		
Vista Chemical	700304	209
Rollins Term	700306	209
Braen Ind Inc	700306	209
Bayonne Ind	700051	209
Standard Tank	700023	211
Howard Fuel	700022	211
Edison Amboy A	700030	211
Vulcan Mtrls	700024	209
New York, Northern: Del & Hudson RR	690085	209
New York, Eastern:		
Perkit Bld Box	680444	205
Patchque Oil	700019	211
Hernly Operati	700025	211
Patchogue Oil	700241	211
12038 23 3154	700244	291
New York, Southern:		
B&W Bolt & Nut	66489	211
Ward W E	66489	211
Corp of the ER	680903	211
Edwards P	680903	211
Oregon: R & M	700179	209
Puerto Rico:		
Caribd Nitro	690095	211
Catano Barge	690097	21
Tennessee, Western: Delta Refining	700083	211
Texas, Eastern: Mobil Oil	705876	211
Texas, Southern:		
SW Oil & Refin	700032	211
Suntide Refin	700033	211
Coastal St Ref	700031	209
Coastal Transp	700177	209
Vermont:		
Northern Oil	06445	262
Do	706648	205
Washington, Western: Farwest Cap	51914	211
Florida, Middle: Sun Oil Co	700038	211
Texas, Southern:		
Coastal Transp	700177	211
Tenneco Mfg	700225	211
Wisconsin, Western:		
St Regis Paper	700105	205
Falls Dairy Co	700106	205

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[1] See following Criminal Codes for explanation of code numbers.

CRIMINAL CODES

Number	Court matters
205	Awaiting service of warrant or summons.
209	Awaiting arraignment in court.
211	Awaiting trial.
213	Awaiting sentence including referral to probation officer.
262	Awaiting completion of investigation or report, advice or instructions from Agency.

APPENDIX 8.—CORRESPONDENCE BETWEEN SUBCOMMITTEE, DEPARTMENT OF JUSTICE, CORPS OF ENGINEERS, AND FEDERAL WATER QUALITY ADMINISTRATION CONCERNING PROPOSED MEMORANDUM OF UNDERSTANDING BETWEEN THOSE AGENCIES RE: ENFORCEMENT OF 1899 REFUSE ACT (33 U.S. CODE 407)

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., May 12, 1970.

Mr. DAVID D. DOMINICK,
Commissioner, Federal Water Quality Administration,
Arlington, Va.

DEAR MR. DOMINICK: On May 8, 1970, Mr. J. J. Lankhorst, Assistant General Counsel for the Corps of Engineers, testified before the Subcommittee on Energy, National Resources, and Environment of the Senate Commerce Committee concerning the enforcement of the 1899 Refuse Act (30 Stat. 1151). A copy of his prepared statement is enclosed.

We are concerned that Mr. Lankhorst's statement implies an executive branch policy to limit enforcement of that Act.

Mr. Lankhorst said that the corps is meeting with officials of your agency and the Justice Department "to resolve the extent to which the Refuse Act should be used to control pollution * * * [and] that a memorandum of understanding will be reached governing use of the Refuse Act." He also said that, pending resolution of such a memorandum, reports of pollution received by the corps would be referred to your agency "for investigation, comment, and recommendations as to whether action should be taken under the Refuse Act."

We would appreciate your response to the following questions:

1. (a) Under what circumstances would your agency recommend that violations of the Refuse Act not be enforced?

(b) Under what circumstances would your agency recommend that the Refuse Act not be "used to control pollution?"

(c) In view of the provision in section 24 of the Federal Water Pollution Control Act, as amended, which specifically provides that it does not limit enforcement of the Refuse Act, should alleged violators of that act be immunized from prosecution for such violation simply because your agency is seeking to abate the pollution under the Federal Water Pollution Control Act?

2. (a) What is the statutory authority under which your agency may conduct investigations of violations of the Refuse Act? Please cite such authority.

(b) If your agency has such authority, why is the Department seeking specific authority to investigate water pollution discharges as part of the legislation transmitted to the Congress on February 10, 1970? (See H.R. 15872, sec. 10(j).)

3. (a) Does your agency have sufficient funds to conduct such investigations, in addition to carrying out its responsibilities under the Federal Water Pollution Control Act?

(b) What is the estimated annual cost of such investigations?

(c) Will the corps reimburse your agency for such costs?

4. (a) Does your agency have sufficient personnel to conduct such investigations, in addition to carrying out its responsibilities under the Federal Water Pollution Control Act?

(b) What is the estimated number of personnel needed to conduct such investigations?

We would appreciate your providing to us three copies of the present draft, and each further draft, of the proposed memorandum of understanding.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

STATEMENT OF MR. J. J. LANKHORST, ASSISTANT GENERAL COUNSEL, OFFICE OF THE CHIEF OF ENGINEERS, BEFORE THE SUBCOMMITTEE ON ENERGY, NATURAL RESOURCES, AND ENVIRONMENT OF THE COMMERCE COMMITTEE, U.S. SENATE, MAY 8, 1970

Mr. Chairman and members of the committee, I am Mr. J. J. Lankhorst, Assistant General Counsel, Office of the Chief of Engineers, Department of the Army. I am accompanied by Maj. E. A. Welsh, Deputy District Engineer, and other personnel from the U.S. Army Engineer District, Detroit. I appreciate having the opportunity to testify before this committee on the legal enforcement of the statutory authorities administered by the Corps of Engineers in the interests of pollution control.

The authority of the U.S. Army Engineers to control construction in, or deposit of refuse matter into, navigable waters of the United States stems from laws enacted before the beginning of this century. These laws prohibit the dredging, filling, erection of structures, or deposit or refuse in navigable waters unless done under a permit issued by the Corps of Engineers, and as authorized by the Secretary of the Army, or under regulations prescribed by the Secretary of the Army. It is believed the law of particular interest to your committee is the "Refuse Act," section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. 407), which prohibits the discharge of any matter of any kind other than domestic sewage into a navigable water of the United States. The act also prohibits the placing of material on the banks of a waterway where the material is subject to washing into the water so as to endanger navigation.

Section 16 of the 1899 act provides that violators are guilty of a misdemeanor and are subject to a fine not exceeding $2,500 nor less than $500, or to imprisonment not exceeding 1 year nor less than 30 days, or to both such fine and imprisonment, for each offense. Section 16 of the 1899 act also provides that the license of the master of a violating vessel may be revoked or suspended upon conviction for a term to be fixed by the judge. The vessel is also liable for the pecuniary penalties specified and for the amount of damage charged. Section 17 of the 1899 act provides that the Department of Justice shall conduct legal proceedings necessary to enforce the act's provisions.

At first the Refuse Act was enforced with a view only toward the effect a deposit or discharge would have on the navigable capacity of a waterway. Later the Refuse Act was used to supplement the Oil Pollution Act of 1924 so as to control oil discharges from shore facilities and discharges into nontidal waters, two situations not covered by the Oil Pollution Act of 1924. Following enactment of the Fish and Wildlife Coordination Act of 1958, consideration of permit applications was broadened to include the effects of any proposed discharge on fish and wildlife. As water pollution became a matter of increasing awareness, the public interest in water quality also became a significant factor in evaluating permit applications. Today, the regulations of the Corps of Engineers require specific evaluation of the effects of a proposed discharge on navigation, fish and wildlife, water quality, conservation, esthetics, ecology, and other environmental factors.

The courts have afforded a liberal interpretation to the Refuse Act. It has been held that the Government need not prove that the discharge of refuse was either willful or the result of negligence. *The President Coolidge* (101 F. 2d 638). The Supreme Court held that the act prohibited industrial discharges and that an injunctive remedy is available as a means of enforcement. *U.S.* v. *Republic Steel Company* (362 U.S. 482). In 1966 the U.S. Supreme Court ruled that while valuable aviation gasoline was not refuse before an accidental spill, it became refuse when it reached navigable waters, *U.S.* v. *Standard Oil Company* (384 U.S. 224). In the case of *U.S.* v. *Esso Standard Oil Company of Puerto Rico* (375 F. 2d 621), the circuit court of appeals ruled that placing or discharging refuse matter on the ground where gravity will carry the refuse into a navigable water constitutes a discharge into navigable waters. In 1969 the U.S. district court in the case of *U.S.* v. *Interlake Steel Corp.* (297 F. Supp. 912), in a significant decision ruled that the Department of Justice can prosecute violators of the Refuse Act on the complaint of any responsible person and that the Secretary of the Army or the Corps of Engineers need not request prosecution; the same court ruled that compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), is no defense to a prosecution under the Refuse Act. It is expected that the courts' broad application of the Refuse Act will continue, particularly in view of section 102 of the National

Environmental Policy Act of 1969 (83 Stat. 852), which directs that the interpretation of public laws be in consonance with the goals set forth in that act.

Notwithstanding the broad powers granted by the Refuse Act, the Department of the Army and the Corps of Engineers recognize that Congress, in the Federal Water Pollution Control Act cited above, declared that water pollution control is the primary responsibility of the States, with additional and supplemental Federal aid and enforcement procedures specified. The Department of the Army recognizes that the Refuse Act should be responsibly enforced in proper juxtaposition with other pollution acts. To this end, an interdepartmental meeting has been held to resolve the extent to which the Refuse Act should be used to control pollution. At the meeting arranged by Mr. Robert E. Jordan, Special Assistant to the Secretary of the Army for Civil Affairs, the Criminal, Civil, and the Land and Natural Resources Divisions of the Department of Justice, the Department of the Interior, the Department of Commerce, and the White House Council on Environmental Quality were represented. It is expected that a memorandum of understanding will be reached governing use of the Refuse Act. In the interim, the U.S. Army Engineer districts are being instructed to refer reports of pollution to the local office of the Federal Water Quality Administration for investigation, comment, and recommendations as to whether action should be taken under the Refuse Act.

Thank you, Mr. Chairman; that completes my statement. We will be pleased to answer any questions you may have.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., May 13, 1970.

Lt. Gen. F. J. CLARKE,
Chief of Engineers,
Department of the Army, Washington, D.C.

DEAR GENERAL CLARKE: On May 8, 1970, Mr. J. J. Lankhorst, Assistant General Counsel of the Corps of Engineers, testified before the Subcommittee on Energy, Natural Resources, and Environment of the Senate Commerce Committee on the enforcement of the 1899 Refuse Act (30 Stat. 1151).

As part of our continuing investigation of the economy and efficiency of the corps administration of the Refuse Act, we are concerned that Mr. Lankhorst's statement implies (1) a policy of limited enforcement of the act and (2) that the corps is apparently seeking to shift its enforcement responsibilities under that act to the Federal Water Quality Administration at a possible added cost to the Government. Mr. Lankhorst's prepared statement states in part, as follows:

"Notwithstanding the broad powers granted by the Refuse Act, the Department of the Army and the Corps of Engineers recognize *that Congress, in the Federal Water Pollution Control Act cited above, declared that water pollution control is the primary responsibility of the States, with additional and supplemental Federal aid and enforcement procedures specified. The Department of the Army recognizes that the Refuse Act should be responsibly enforced in proper juxtaposition with other pollution acts.* To this end, an interdepartmental meeting has been held to resolve the extent to which the Refuse Act should be used to control pollution. * * * It is expected that a memorandum of understanding will be reached governing use of the Refuse Act. *In the interim, the U.S. Army Engineer districts are being instructed to refer reports of pollution to the local office of the Federal Water Quality Administration for investigation, comment, and recommendations as to whether action should be taken under the Refuse Act.*" (Italic supplied.)

The first part of this quote implies that the policy statements in sections 1 and 10 of the Federal Water Polution Control Act, as amended (33 U.S.C. 466 and 466g), also apply to the Refuse Act. In our opinion, they do not.

The Committee on Government Operations recently stated, is its report of March 18, 1970 (H. Rept. No. 91-917, p. 16), that the usefulness of the Refuse Act in controlling pollution "is not reduced by more recent water pollution control legislation. The Federal Water Pollution Control Act specifically states (33 United States Code sec. 466k) that it shall not be construed as (1) superseding or limiting the functions, under any other law * * * of any other officers or agency of the United States, relating to water pollution, or (2) affecting or impairing the provisions of * * * sections 13 through 17 of the River and Harbor Act of 1899, as amended (i.e., the Refuse Act)."

If a polluter discharges refuse matter into a navigable waterway in violation of the prohibition in section 13 of the Refuse Act (33 U.S.C. 407) against such discharges, the Corps of Engineers has the responsibility to enforce the prohibition, and the U.S. attorneys have the duty "to vigorously prosecute all offenders" of the Refuse Act (33 U.S.C. 413). That responsibility and duty are not diminished by any provision of the Federal Water Pollution Control Act.

Further, if the polluter intends to continue such discharges, he must obtain a permit from the corps to avoid further prosecution under the act. The permit application would then, of course, be subject to the new section 21(b) of the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970 (Public Law 91–224; 84 Stat. 91–108) which requires the applicant to provide the corps with a certification from the appropriate State that the discharge "will not violate applicable water quality standards."

We would therefore appreciate your providing to us an explanation of what the corps means or intends by Mr. Lankhorst's statement that the "Department of the Army recognizes that the Refuse Act should be responsibly enforced in proper juxtaposition with other pollution acts."

The second part of the quoted statement informs the Senate subcommittee of the corps interim policy on enforcement of the Refuse Act. Under this policy, the corps has instructed the District Engineers to "refer reports of pollution to the local office of the Federal Water Quality Administration for investigation, comment, and recommendations as to whether action should be taken under the Refuse Act." Please provide to us three copies of these instructions.

We would appreciate your responses to the following questions:

1. (a) What is the statutory authority for the corps to transfer to the Federal Water Quality Administration responsibility for investigations of violations of the Refuse Act? Please cite such authority.

(b) Why should FWQA undertake such investigations? Please provide details concerning the economies that will accrue to the Government if FWQA, rather than the corps, performed such investigations.

(c) Will the corps reimburse FWQA for the costs of such investigations?

(d) Has the corps been investigating pollution violations of the Refuse Act until now?

(e) If so, why is it necessary or desirable for the corps to relinquish this responsibility to FWQA?

(f) How long do such investigations normally take?

(g) What is the annual cost of such investigations?

(h) How many personnel in each district office make these investigations?

(i) How much such investigations were made in each of the last three fiscal years?

2. Why is it necessary to obtain the comments and recommendations of FWQA concerning alleged violations of the Refuse Act?

(a) Is it not the duty of the corps to make its own independent judgment as to alleged violations of the Refuse Act and to forward to the Department of Justice all cases where there is sufficient evidence of such violation?

(b) Even if FWQA recommended against prosecution of an alleged Refuse Act violation because the polluter is meeting compliance schedules established under the Federal Water Pollution Control Act or for any other reason, should not the corps require that the violator—

> (i) apply for a permit to make any further discharges, and
>
> (ii) furnish the certification required under section 21(b) of the Federal Water Pollution Control Act and, where appropriate, the data specified in Recommendation 5 of this committee's report (H. Rept. 91–917, p. 14)?

3. (a) Will the corps seek injunctions, in addition to criminal sanctions, against those persons who discharge refuse matter into a navigable waterway without a corps permit in violation of the Refuse Act, and require such persons "to cease future discharges and to remove the polluting substance already discharged"? (H. Rept. 91–917, p. 18).

(b) If not, why not?

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

House of Representatives,
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, D.C., May 13, 1970.

Hon. John Newton Mitchell,
Attorney General, Department of Justice,
Washington, D.C.

Dear Mr. Attorney General: Enclosed is a copy of a prepared statement given by Mr. J. J. Lankhorst, Assistant General Counsel for the Corps of Engineers, before the Subcommittee on Energy, Natural Resources, and Environment of the Senate Committee on Commerce concerning enforcement of the 1899 Refuse Act (30 Stat. 1151).

We are concerned that the statement implies an executive branch policy to limit enforcement of that act.

Mr. Lankhorst said that the corps is meeting with officials of the Justice Department and the Interior Department "to resolve the extent to which the Refuse Act should be used to control pollution * * * [and] that a memorandum of understanding will be reached governing use of the Refuse Act." He also said that, in the interim, instructions have been given to the corps' district engineers "to refer reports of pollution to the local office of the Federal Water Quality Administration for investigation, comment, and recommendations as to whether action should be taken under the Refuse Act."

We would appreciate your response to the following questions:

1. (a) Have similar instructions been issued by the Justice Department to U.S. attorneys?

(b) If so, please provide to us three copies of those instructions.

2. (a) In view of section 24 of the Federal Water Pollution Control Act, as amended, by the Water Quality Improvement Act of 1970 (Public Law 91-224; 84 Stat. 91) which specifically provides that it does not limit enforcement of the Refuse Act, isn't it the responsibility of U.S. attorneys to "vigorously prosecute" (see 33 U.S.C. 413) alleged violations of the Refuse Act regardless of actions taken by the Interior Department to abate the pollution under laws it administers?

(b) If not, why not?

3. Under what circumstances would the Refuse Act not be used "to control pollution?"

4. What is the statutory authority for the Federal Water Quality Administration to conduct investigations to enforce a statute it does not administer?

5. (a) Will your Deparment seek injunctions, in addition to criminal prosecution, against those persons who discharge refuse matter into a navigable waterway without a corps permit in violation of the Refuse Act, to require such persons "to cease future discharges and to remove the polluting substance already discharged?" (H. Rep. 91-917, Mar. 18, 1970, p. 18.)

(b) If not, why not?

(c) Will the Justice Department apply this policy to the Van Iderstine Co. and Pendura Pachogue Oil Terminal Corp., both of New York City, which, according to the New York Times of April 22, 1970, are both being prosecuted by the U.S. attorney for the eastern district of New York for successive recent violations of the Refuse Act?

(d) If not, why not?

Please provide to us three copies of all instructions, in addition to the one referred to above, issued by the Justice Department to U.S. attorneys concerning the enforcement of the Refuse Act.

Sincerely,

Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee.

Department of Justice,
Washington, D.C. June 2, 1970.

Hon. Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in reply to your letter of May 13, 1970, with which you enclosed a statement given by Mr. J. J. Lankhorst, Assistant General Counsel for the Corps of Engineers before the Subcommittee on Energy, Natural Resources, and Environment of the Senate Committee on Commerce. You expressed concern that the statement given by Mr. Lankhorst implies an executive branch policy to limit the enforcement of the Refuse Act and pose several questions to illuminate the Government's position.

Answering your expression of concern generally, we would say that the policy of the Executive in the enforcement of the Refuse Act is to fit that act into the regulatory scheme devised by Congress to combat pollution most efficiently and effectively, bearing in mind, as noted by Mr. Lankhorst, that it is the declared intent of Congress that the control of water pollution be dealt with primarily by the States, with additional and supplemental Federal support. It is patent that the Refuse Act is not and cannot be the weapon of choice in the armament of antipollution laws in all instances; thus, prospective discretion is always essential and must take into account the possible effects which the use of the Refuse Act might have upon the programs of other agencies concerned with the broad problem.

In answer to your specific questions (all of which we assume refer to enforcement of the Refuse Act):

1(a) Instructions have not been issued by the Justice Department to U.S. attorneys to refer reports of pollution to the local office of the Federal Water Quality Administration for investigation, etc. since under the specific terms of the act, as well as the organizational structure for the enforcement of the act, or primary relationship is with the Corps of Engineers. Therefore, complaints of violations of the Refuse Act will continue to be referred to that agency, as in the past. The corps, of course, may choose to utilize the services and secure the advice and recommendations of the Federal Water Quality Administration in appropriate circumstances. We understand, however, that the statement of Mr. Lankhorst in that regard had reference to a limited class of pollution complaints, that is, those dealing with continuing industrial discharges, and not to the isolated, noncontinuous deposits of refuse material unrelated to any program within the jurisdiction of the Federal Water Quality Administration.

2(a). In view of the expression of congressional intent in recent enactments, this Department will continue to vigorously prosecute violations of the act. However, it would be patently poor prosecutive judgment as well as lacking in commonsense to bring prosecutive action under the Refuse Act where such enforcement activity would have a disruptive or devitalizing effect upon programs designed or approved by the Federal Water Quality Administration, and we will therefore endeavor always to take into account the effect upon such programs which prosecution under the Refuse Act might have upon them.

3. As indicated in reference to question 2(a) above, the Refuse Act would not be used "to control pollution" where satisfactory results are being achieved under State or Federal programs with which participating industrial producers are in full compliance. There are other circumstances where the Refuse Act would be legally inapplicable, for example, where the affected body of water is not a navigable water or tributary thereof, where the Corps of Engineers has issued a permit which continues in effect or where the material consists of refuse matter flowing from streets or sewers in a liquid state. We do not intend to suggest that these examples exhaust the list of exceptions.

4. It is suggested that this question be addressed to the Federal Water Quality Administration.

5. This Department will seek injunctions against persons discharging refuse matter into navigable waters of the United States without a permit from the Corps of Engineers where the discharge is of a continuing nature, and where the injunction proceeding would not disrupt or be inconsistent with such administrative proceedings as the Department of the Interior may be conducting under the Federal Water Pollution Control Act, or duplicative of such actions as a State may have initiated to abate the same source of pollution. In our opinion, it would not be in the genuine interest of the Government to bring an action under the Refuse Act to secure a criminal sanction against a company which admittedly is discharging refuse into the navigable waters of the United States, but which, pursuant to a program being conducted by the Federal Water Quality Administration, is spending significant amounts of money to secure the abatement of that pollution. Nor does it seem desirable for the Federal Government to seek to enjoin polluting activities when a State government has initiated court action to enjoin the same activity.

We have discussed with the office of the U.S. Attorney for the Eastern District of New York the two specific cases mentioned in your letter, and we have been advised that the discharges into navigable waters for which these companies are responsible have not been of a continuing nature, and that there is no ongoing activity, therefore, which can be made the subject of a suit for an injunction.

Sincerely,

SHIRO KASHIWA,
Assistant Attorney General.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 3, 1970.

Hon. JOHN NEWTON MITCHELL,
Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Enclosed for your information is a copy of a letter we have today sent to Mr. David D. Dominick, Commissioner of the Federal Water Quality Administration concerning enforcement of the 1899 Refuse Act (30 Stat. 1151). Also enclosed is a copy of our letter of May 12, 1970, to Commissioner Dominick which is referred to in our letter of this date.

We hope that our letter to Commissioner Dominick will assist you in replying to our letter of May 13, 1970, to you concerning enforcement of the 1899 act.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 3, 1970.

Mr. DAVID D. DOMINICK,
Commissioner, Federal Water Quality Administration,
Washington, D.C.

DEAR MR. DOMINICK: When you visited my office on May 25, 1970, we discussed in general the views of the Federal Water Quality Administration concerning enforcement by the Corps of Engineers of the 1899 Refuse Act (30 Stat. 1151). Prior to our discussion, we had sent a letter on May 12, to you raising several questions concerning a statement Mr. J. J. Lankhorst, Assistant General Counsel for the corps made before a Senate subcommittee on May 8, 1970, which indicated an executive branch policy to limit enforcement of the 1899 act.

We want to take this opportunity to supplement the May 12 letter and our later discussion so that you will clearly understand the views of this subcommittee concerning enforcement of the 1899 act.

Mr. Lankhorst implied in his written testimony that the policy statements in sections 1 and 10 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 and 466g), which "recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution," also apply to the 1899 Refuse Act. In our opinion, they do not.

The Committee on Government Operations recently stated, in its report of March 18, 1970 (H. Rept. No. 91–917, p. 16), entitled "Our Waters and Wetlands; How the Corps of Engineers can help Prevent their Destruction and Pollution", that the usefulness of the Refuse Act in controlling pollution "is not reduced by more recent water pollution control legislation. The Federal Water Pollution Control Act specifically states (33 U.S.C. 466k) that it shall not be construed as (1) superseding or limiting the functions, under any law * * * of any other officer or agency of the United States, relating to water pollution, or (2) affecting or impairing the provisions of * * * sections 13 through 17 of the River and Harbor Act of 1899, as amended (i.e., the Refuse Act)."

If a polluter discharges refuse matter into a navigable waterway in violation of section 13 of the Refuse Act (33 U.S.C. 407), which prohibits such discharges, the Corps of Engineers has the responsibility to enforce the prohibition, and the U.S. attorneys have the duty "to vigorously prosecute all offenders" of the Refuse Act (33 U.S.C. 413). That responsibility and duty are not diminished by any provision of the Federal Pollution Control Act.

Further, if the polluter intends to continue such discharges, he must obtain a permit from the corps to avoid further prosecution under the act. The permit application would then, of course, be subject to the new section 21(b) of the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970 (Public Law 91–224; 84 Stat. 91–108), which requires the applicant to provide the corps with a certification from the appropriate State that the discharge "will not violate applicable water quality standards."

The applicant for a permit would also be required to provide certain information to the corps under its revised regulations (ER 1145–2–303 of April 23, 1970) governing new application for corps' permits for outfall sewers. The corps revised its regulation pursuant to, and in accord with, the recommendations of this committee's report of March 18, 1970 (H. Rept. 91–917, supra).

Thus, under the Refuse Act any person or corporation discharging refuse material into a navigable waterway or its tributaries must obtain a permit from the Corps of Engineers regardless of any actions taken or contemplated by your agency or a State to enforce water pollution control laws against such person or corporation. The fact that, under the Federal Water Pollution Control Act, or any State law, such person or corporation is installing water pollution control facilities under a schedule approved by FWQA or a State does not in any way affect the obligation under the 1899 Act to obtain a permit from the corps for the discharge of refuse material into such waters.

We hope that this letter will assist you in replying to our letter of May 12.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington D.C., June 4, 1970.

Hon. HENRY S. REUSS,
House of Representatives,
Washington, D.C.

DEAR MR. REUSS: Thank you for your letter of May 12, 1970, in connection with the testimony of Mr. J. J. Lankhorst of the Corps of Engineers before the Senate Committee on Commerce, Subcommittee on Energy, Natural Resources, and the Environment, on May 8, concerning the enforcement of the Refuse Act of 1899.

We are preparing a response to the series of questions that you directed to us relative to the role of this agency in the implementation of the Refuse Act. You should be hearing from us on this matter within a very short time.

Sincerely yours,

DAVID D. DOMINICK, *Commissioner.*

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., September 24, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This is in further response to your letter of May 12, 1970, in which you asked for our response to a series of questions relating to the role of the Federal Water Quality Administration in the implementation of the Refuse Act of 1899, and your subsequent letter on June 3 in which you clarified the views of the subcommittee.

We have enclosed our answers to your questions. We are developing procedures with the Corps of Engineers in consultation with the Department of Justice for effective and expeditions implementation of the Refuse Act. A statement of those procedures will be forwarded to you as soon as they are developed. We appreciate the opportunity to provide you with this information and will be pleased to assist you with any additional questions you may have on this subject.

Sincerely yours,

DAVID D. DOMINICK, *Commissioner.*

Questions and FWQA Answers in Response to Representative Henry S. Reuss, July 1970

1. (a) Under what circumstances would your agency recommend that violations of the Refuse Act not be enforced?

We believe that violations of the Refuse Act should be enforced. In our view such enforcement must necessarily be in the context of other Federal laws which also prohibit the discharge of pollutants into the navigable waterways of the United States. One such Federal statute is the Federal Water Pollution Control Act, as amended, which provides for an orderly and systematic approach to the abatement of polluting discharges in compliance with water quality standards and within a reasonable time schedule.

In view of this legal context we do not believe that the proper enforcement of the Refuse Act extends to those cases where dischargers are in compliance with remedial schedules of water quality standards or in compliance with the requirements of an enforcement conference held pursuant to the Federal Water Pollution Control Act.

(b) Under what circumstances would your agency recommend that the Refuse Act not be "used to control pollution"?

Again, as we have stated above, we believe the Refuse Act should be used to control pollution in the overall Federal regulatory context. In our view we can aggressively pursue the pollution abatement program through the mechanism of the 1899 act in combination with other Federal statutes in a way that will be equitable and orderly and yet secure effective cleanup.

Certain circumstances do exist, however, under which the Refuse Act is inherently more useful than other statutes, especially in cases which involve discharges to intrastate waterways for which water quality standards are not now applicable and other instances in which satisfactory standards do not exist; for cases in which dischargers are not complying with applicable water quality standards; and for dischargers who are discharging wastes on a onetime basis, and are therefore not subject to water quality standards.

(c) In view of the provision in section 24 of the Federal Water Pollution Control Act, as amended, which specifically provides that it does not limit enforcement of the Refuse Act, should alleged violators of that act be immunized from prosecution for such violation simply because your agency is seeking to abate the pollution under the Federal Water Pollution Control Act?

We do not endorse the immunization of alleged violators of the 1899 act from prosecution because we are seeking to abate pollution under the Federal Water Pollution Control Act; however, we believe that it would be less than equitable to prosecute dischargers under the Refuse Act who are conscientiously pursuing time schedules for remedial action established as a result of Federal-State water quality standards or as a result of an enforcement conference pursuant to the provisions of the Federal Water Pollution Control Act, as amended. This action would not only be inappropriate but also would appear to us as being disruptive of the orderly process of water pollution control as prescribed by the Congress. This is not to say, however, that we do not favor the proper prosecution of the Rivers and Harbors Act.

2. (a) What is the statutory authority under which your agency may conduct investigations of violations of the Refuse Act? Please cite such authority.

Under the Federal Water Pollution Control Act, as amended, the FWQA has primary responsibility for the national program of water quality enhancement and protection. In the execution of this mission, the Congress has directed the FWQA, in section 3(a) of this act, to develop comprehensive programs for eliminating or reducing the pollution of interstate waters. For this purpose, we are authorized to make joint investigations with Federal, State, and local authorities on the condition of any waters and of the discharges of any sewage, industrial wastes, or other substance which may adversely affect these waters. In the conduct of these investigations, the FWQA necessarily learns of polluting discharges which constitute violations of the Refuse Act.

Similarly, under section 5(c) of the Federal Water Pollution Control Act, the FWQA is authorized to collect and disseminate basic data on chemical, physical, and biological water quality information in cooperation with other Federal, State, and local agencies with related responsibilities. In the performance of this function, the FWQA can bring to the attention of the Corps of Engineers appropriate data for use in the prosecution of violators of the Refuse Act. Moreover, section 10 of our act, which authorizes the Secretary of the Interior to bring abatement actions against polluters "on the basis of reports, surveys, or studies," is still a third statutory authority whereby FWQA investigates polluting discharges which might also be violations of the Refuse Act.

In the exercise of the aforementioned authorities FWQA learns of violations of the Refuse Act and brings its information to the attention of the corps for use in prosecution of violators of the Refuse Act. Although the Federal Water Quality Administration is not designated in section 413 of the Rivers and Harbors Act to request the Attorney General to bring enforcement actions under that act, in *U.S.* v. *Interlake Steel Corp.*, 297 F Supp. (N.D., Ill., E.D., 1969), the Court held that the U.S. attorneys may bring enforcement actions under the act on information received from agents and officers other than those identified in section 413.

(b) If your agency has such authority, why is the Department seeking specific authority to investigate water pollution discharges as part of the legislation transmitted to the Congress on February 10, 1970? (See H.R. 15872, section 10(j).)

The authority the administration is seeking in section 10(j) of H.R. 15872 (identical to the administration proposal, H.R. 15905) would strengthen that authority of the Secretary of the Interior in the enforcement process. Section 10(j) would specifically authorize the Secretary: to investigate any facts, conditions, or practices which may be necessary to determine a violation of the act: to require the filing of a written statement by any person concerning a matter under investigation; to administer oaths, subpena witnesses, and compel their attendance; to take evidence, among other functions. These authorities to require the filing of reports; to compel the attendance and testimony of witnesses; and to authorize entrance of any public or private property discharging into waters subject to an enforcement action, would be new.

3. (*a*) Does your agency have sufficient funds to conduct such investigations, in addition to carrying out its responsibilities under the Federal Water Pollution Control Act?

(*b*) What is the estimated annual cost of such investigation?

Investigations needed to support the 1899 act, as indicated above, are usually conducted as an integral part of FWQA's program activities, and, thus, we have not requested resources nor can we provide an estimate of the resources needed on a separable basis. We believe that our resources have been adequate to carry out these joint purpose investigations to date. However, as we develop more effective working relationships in utilizing the authorities of the 1899 act, we may have to reassess our resources needs.

(*c*) Will the corps reimburse your agency for such costs?

No provision for reimbursement has been made, as these costs are incurred in the performance of our own statutory responsibilities.

4. (*a*) Does your agency have sufficient personnel to conduct such investigations, in addition to carrying out its responsibilities under the Federal Water Pollution Control Act?

(*b*) What is the estimated number of personnel needed to conduct such investigations?

Since personnel in the performance of their duties and responsibilities under the Federal Water Pollution Control Act also have occasion to investigate violations of the Refuse Act, accordingly, we cannot provide figures as to personnel specifically engaged in such investigations.

In our view, the Refuse Act has not been fully utilized as a pollution control tool: its potential, as such, has only recently emerged. The Federal Water Quality Administration is endeavoring in cooperation with the Corps of Engineers and the Justice Department to devise a joint approach, using the Federal Water Pollution Control Act, and other Federal statutes, in a way that will eliminate the confusion which separate and independently administered Federal pollution control laws can create.

APPENDIX 9.—MATERIALS RELATING TO MERCURY POLLUTERS OF THE NATION'S NAVIGABLE WATERWAYS

[Department of the Interior News Release, Office of the Secretary, July 14, 1970]

SECRETARY HICKEL MOVES AGAINST MERCURY POLLUTION

Interior Secretary Walter J. Hickel today declared his department is "moving aggressively to identify and eliminate industrial discharges of mercury pollutants into the Nation's waterways."

"To insure immediate action," the Secretary said, "I have today designated a special investigating team of water quality and minerals experts from the Federal Water Quality Administration, and the U.S. Geological Survey, to pinpoint areas of mercury contamination and to provide the basic data needed for effective control."

In telegrams to the Governors of 17 States in which mercury pollution is suspected, Secretary Hickel pledged full support of the Department's water quality monitoring expertise and legislative authority. He urged the Governors to act vigorously in eliminating known discharges of the metal.

In his statement today, the Secretary said, "The administration is developing hard evidence and will seek court action in any confirmed case of mercury pollution if corrective measures are not taken swiftly on local levels."

He said the Interior Department will notify all industries across the Nation which are shown by Interior investigations and data to be responsible for mercury pollution.

The Secretary's declaration today follows reports from the Federal Water Quality Administration which reveal that abnormal mercury concentrations have been found in waste water in major waterways in the South, Southwest, Northeast, and Midwest areas of the Nation.

"Discharges of mercury," Secretary Hickel said, "present an intolerable threat to the health and safety of Americans. This dangerous practice must be stopped.

"The mercury contamination problem can be solved, provided we have sufficient basic data for setting and enforcing necessary standards.

"Toward this end, I have directed the Geological Survey, in cooperation with FWQA, to give high priority to mercury monitoring in the Department's national network of 4,000 water quality stations."

In a report to the Secretary, Dr. William T. Pecora, Director of U.S. Geological Survey, said basic data already has been collected in 16 States using a precise analytical method recently developed in the Geological Survey's Denver Research Center. The remaining States will be covered at the earliest possible date to provide a complete picture of the mercury contamination pattern.

"We are aware," said Hickel, "that mercury is a natural component in much of nature, including rain, the sea, the earth's crust and its water resources. However, concentrations from these sources generally fall below those thought to affect human health, or those responsible for our present concern.

"Although we cannot expect to prevent inputs from these natural sources, nor undo past damage, we are determined to stop pollution caused by man—that 'messy animal.' "

Text of Secretary Hickel's telegram to the Governors of Alabama, Delaware, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Michigan, North Carolina, New York, Ohio, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin:

Information gathered to date by Interior scientists and technicians indicates clearly that the presence of mercury in much of our Nation's water constitutes an imminent health hazard. Because of the toxic effects of this metal, which may be irreversible in human beings, immediate action is essential on all levels, public and private.

Preliminary investigations by Interior's Federal Water Quality Administration lead me to conclude that certain firms in your State are discharging mercury into waterways. I am prepared to pursue Federal legal action if this proves to be the case and if prompt corrective action is not taken.

Information presently available indicates that many firms in your State are users of mercury. I urge that you determine whether any of these users are discharging mercury. If they are, abatement action should be initiated at once.

The gravity of the threat to human health dictates this urgent action. I will keep you advised of developments and look forward to working cooperatively with you on this critical matter. Our FWQA regional director stands ready to assist you in this effort.

WALTER J. HICKEL,
Secretary of the Interior.

[Department of the Interior news release, Office of the Secretary, July 22, 1970]

INTERIOR SEEKS LEGAL ACTION AGAINST MERCURY POLLUTERS

Secretary of the Interior Walter J. Hickel today announced he has submitted the names of 13 U.S. industrial firms to the Justice Department for possible prosecution on a charge, the Secretary said, "of discharging into the Nation's waterways sufficient quantities of mercury to constitute a serious hazard to public health."

The action followed the results of tests conducted by the Federal Water Quality Administration which Secretary Hickel ordered to conduct a nationwide search for mercury contamination.

Secretary Hickel said "these discharges must be stopped. They represent an intolerable threat to the health and safety of Americans."

Mercury and mercury compounds are used in the manufacture of scientific and electrical instruments, in dentistry, power generation, solders, the manufacture of lamps, as medicinal products, disinfectants, detonators, pigments, photoengraving, as a catalyst in the manufacture of chlorine and caustic soda, for producing vinyl clorides, and as a slimicide in the pulp and paper industry. "Mercury is a natural component of nature as well," Secretary Hickel said, "found in the rain, the sea, the earth's crust and its water resources. However, these con-concentrations generally fall below those thought to affect human health."

"Our present concern," he added, "is the mercury concentrations exceeding acceptable limits." The Food and Drug Administration's recommended limit in fish is 0.5 parts per million.

[Department of the Interior news release, Office of the Secretary, July 24, 1970]

CHARGES FILED AGAINST MERCURY POLLUTERS

Secretary of the Interior Walter J. Hickel announced today that the Justice Department will file charges against 10 U.S. industrial plants which Hickel said are "discharging sufficient quantities of mercury into the Nation's waterways to constitute a serious hazard to public health." The Secretary submitted the names of the companies to the Justice Department for possible prosecution earlier this week.

"This is just the start," the Secretary said. "We are developing hard evidence against a number of other companies."

The Secretary said that the companies' failure to comply with requests to end the instances of mercury pollution voluntarily has resulted in the Federal legal action to force compliance.

The action followed the results of tests conducted by the Federal Water Quality Administration which Secretary Hickel ordered to conduct a nationwide search for mercury contamination.

Secretary Hickel said, "these discharges must be stopped. They represent an intolerable threat to the health and safety of Americans."

The Justice Department will move to take legal action against the following firms for failure to end their discharges of mercury: Diamond Shamrock Corp. at Muscle Shoals, Ala., found to be discharging between 6.5 and 8.6 pounds per day of mercury to Pond Creek, a tributary of the Tennessee River; the Diamond Shamrock plant at Delaware City, Del., for discharging the Delaware River with 11.5 pounds of mercury per day; Olin Mathieson Chemical Co. at Augusta, Ga., for discharging between 8.7 and 12.9 pounds per day of mercury to the Savannah River; the Pennwalt Chemical Co., Calvert City, Ky., for the discharge of 1.54 pounds per day of mercury to the Tennessee River; the Oxford Paper Co., at Rumford, Maine, for the discharging into the Androscoggin River of 26.2 pounds per day of mercury.

Also, the International Mining & Chemical Co.'s chloralkali division plant at Orrington, Maine, for discharging 2.6 pounds per day of mercury to the Penobscot River; Allied Chemical Co., at Solvay, N.Y., for dumping 4.4 pounds per day of mercury to Onondaga Lake; Olin Mathieson's chemical plant at Niagara Falls, N.Y., for the discharge of 26.6 pounds per day of mercury to the Niagara River, and in the State of Washington, Georgia-Pacific Corp., at Bellingham, found to be pouring 41.5 pounds per day of mercury into Puget Sound, and Weyerhaeuser Co., at Longview, Wash., whose pulp and paper mill is discharging 15.1 pounds per day of mercury into the Columbia River.

Mercury and mercury compounds are used in the manufacture of scientific and electrical instruments, in dentistry, power generation, solders, the manufacture of lamps, as medicinal products, disinfectants, detonators, pigments, photoengraving, as a catalyst in the manufacture of chlorine and caustic soda, for producing vinyl chlorides, and as a slimicide in the pulp and paper industry. "Mercury is a natural component of nature as well," Secretary Hickel said, "found in the rain, the sea, the earth's crust, and its water resources. However, these concentrations generally fall below those thought to affect human health."

"Our present concern," he added, "is the mercury concentrations exceeding acceptable limits." The Food and Drug Administration's recommended limit in fish is 0.5 parts per million.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 29, 1970.

Hon. DAVID D. DOMINICK,
Commissioner, Federal Water Quality Administration, Department of the Interior, Washington, D.C.

DEAR MR. DOMINICK: Recently your agency initiated nationwide investigations concerning the discharge of mercury into the Nation's waterways. Last week, Secretary Hickel anounced that, as a result of these investigations, he had recommended to the Justice Department that proceedings be instituted under the 1899 River and Harbor Act (30 Stat. 1151) against such dischargers. Subsequently, the Justice Department announced it will institute such proceedings against eight of them. We understand, however, that there are well over 100 such dischargers.

We are concerned from the standpoint of economy and efficiency about what further actions FWQA will take, as a result of all these investigations, to insure that applicable Federal laws and regulations are complied with.

We would appreciate your prompt response to the following questions and points:

1. Please provide the information requested on the attached table.

2. We understand that each of the State water quality standards approved by the Interior Department contains the following requirement derived from the 1968 report of the National Technical Advisory Committee to the Secretary of the Interior on water quality criteria (p. 3):

Surface waters should be free of substances attributable to discharges or wastes as follows:

* * * * * * *

"(*d*) Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish, and other animal life and plants.

"(*e*) Substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life."

(A) Please advise us when FWQA will institute proceedings under section 10(e)(5) of the above act against each discharger listed in column 6 of the attached table as not complying with the above requirements.

(B) With regard to each discharger so listed for which FWQA is not planning to institue such proceedings, please indicate to us why.

3. We believe that FWQA should supply the Corps of Engineers with the results of your investigations so that it can determine whether such dischargers violate the 1899 law and what action should be taken to abate these violations. Please sate the date on which you informed, or will inform, the Corps about the results of your investgiations.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DISCHARGERS OF MERCURY INTO WATERWAYS

Name and address of discharger	Name of waterway and location of each point of discharge of mercury	Amount of mercury discharged per day	Types and amounts of other wastes discharged by such discharger in such waterway	Is the discharge of mercury subject to water quality standards under sec. 10(c) of FWPC Act (33 U.S.C. 466g(c))	Is the discharger of mercury complying with such standards?	Is the mercury discharge "of a continuing nature" within purview of Justice Department guidelines of July 10, 1970?
(1)	(2)	(3)	(4)	(5)	(6)	(7)

U.S. DEPARTMENT OF THE INTERIOR,
FEDERAL WATER POLLUTION CONTROL ADMINISTRATION,
Washington, D.C., September 24, 1970.

Hon. HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR MR. REUSS: This is in answer to your letter of July 29, 1970, raising three specific questions on mercury dischargers and FWQA investigation and abatement efforts directed toward elimination of mercury discharges.

In June of this year, a nationwide sampling and investigation program was initiated by FWQA in cooperation with other Federal agencies and State water pollution control authorities. A list of all mercury producers and users in the United States was compiled from FWQA, Bureau of Mines, State agencies, and other sources. An investigatory program was then instituted by FWQA to sample and visit all companies known to be using mercury, concentrating first upon plants (1) known to be discharging mercury or using a process likely to result in the discharge of mercury to the aquatic environment or (2) those firms known to be purchasing relatively large quantities of mercury annually. Concurrently with the Federal Government, States were encouraged to make their own investigations and to take administrative or legal action where necessary to abate mercury discharges.

Federal action was coordinated to the greatest degree possible with that of the States, and where an adequate State abatement procedure was instituted, further Federal administrative and legal action was held in abeyance awaiting the outcome of the State proceedings.

A total of 129 mercury users have been identified and investigated. Of these, 79 plants were shown to be discharging no detectable mercury to the environment. A list of the remaining 50 plants which FWQA analyses have shown to be discharging detectable amounts of mercury is attached as tab "A." This list includes, in summary form, most of the information requested in part 1 of your letter (i.e., the table), including what enforcement efforts, if any, have been taken to abate the discharges. Because of the large number of rather complex analyses required to be performed on the effluent of each discharger simply to quantify mercury concentrations in the effluent, determination of the nature and presence of other potential pollutants in the effluent of these companies has not been possible.

Your second request relates to possible Federal abatement proceedings under section 10(c)(5) of the Federal Water Pollution Control Act occasioned by water quality standards violations.

All States with approved water quality standards have incorporated in similar or identical form into their standards the general toxicity criteria which you have set forth in your letter:

Surface waters should be free of substances attributable to discharges or wastes as follows:

(*d*) Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish, and other animal life and plants.

(*e*) Substances and conditions or combinations therof in concentration which produce undesirable aquatic life.

Mercury discharged to the aquatic environment may constitute a violation of these criteria. However, as you are undoubtedly aware, the enforcement procedures under 10(c)(5) of the Federal Water Pollution Control Act do not provide for immediate injunctive relief. For this reason, alternative injunctive relief under the Rivers and Harbors Act of 1899 was sought in the 10 cases referred to the Justice Department.

One 10(c)(5) water quality standards proceeding, however, was instituted against the GAF Corp. plant in Linden, N.J., in early June based upon the discharge of mercury as well as other pollutants.

In addition to these 11 firms, all companies shown to be discharging any mercury to the aquatic environment have been requested to meet with Interior officials to ascertain the levels of mercury discharged and to outline their remedial treatment programs. All companies, including GAF and the 10 presently in litigation, have cooperated extensively with Federal regulatory agencies. Reductions in amounts of mercury discharged by all firms have been substantial—FWQA calculations show an overall 86 percent reduction from July to mid-September (from 287 to 40 pounds). Moreover, remedial treatment programs have been submitted by almost all firms designed to accomplish far more substantial reductions by December 1, 1970.

You may be assured that any company failing to exhibit acceptable reductions in its discharge of mercury or which resists the Interior policy of elimination of manmade additions of mercury below detectable limits will be referred to the Department of Justice for prosecution. Of the original 10 cases submitted to Justice, one has closed its offending plant, three have accepted stipulations setting forth adequate remedial schedules, and two others are in the process of settlement.

Your third point requests FWQA to supply the Corps of Engineers with investigatory data. Since prosecutorial referrals to the Justice Department may be made directly by the Interior Department, corps referrals have not been employed because of the need for immediate action and the desire to avoid complications.

Sincerely yours,

David D. Dominick,
Commissioner.

Enclosure.

KNOWN MERCURY DISCHARGERS (ANALYSIS POSITIVE), AS OF SEPT. 4, 1970

Name and address	Receiving waters	Remarks
Wyandotte Chemical Co., Geismar, La.	Mississippi River	Discharged 1.70 lbs. per day on May 19, 1970; reduced load to 0.91 lb. per day on July 18, 1970.
Dow Chemical Co., Plaquemine, La	do	Company estimated earlier losses to be 40 to 50 lbs. per day; discharged 3.2 lbs. per day on May 18, 1970; on July 15, 1970, mercury was not detected.
Detrex Chemical Industries, Ashtabula, Ohio.[1]	Ditch to Lake Erie	Discharged 2 to 60 lbs. per day in March April 1970 and 3 lbs. per day on June 26, 1970; reduced load to 1.48 lbs. per day on July 14, 1970.
Tenneco Chemical Co., Pasadena, Tex.	Houston ship channel	Discharged approximately 1 lb. per day on May 19, 1970; reduced load to 0.02 to 0.15 lb. per day on July 17–21, 1970.
Wyandotte Chemical Co., Wyandotte, Mich.[1]	Detroit River	Discharged 11 to 74 lbs. per day from Mar. 27 to Apr. 10, 1970; reduced load to 0.50 to 0.35 lbs. per day on July 22–24, 1970.
Allied Chemical Co., Solvay, N.Y.[2]	Onondaga Lake	Discharged 4.4 lbs. per day on July 14, 1970.
Diamond Shamrock Corp., Delaware City, Del.[2]	Delaware River	Discharged 29.1 lbs. per day on July 14, 1970; reduced load to 3.03 lbs. per day on Aug. 21, 1970.
Diamond Shamrock Corp., Muscle Shoals, Ala.[2]	Pond Creek, to Tennessee River	Discharged 8.6 lbs. per day on May 7, 1970; reduced load to 3.25 lbs. per day on July 15, 1970.
Georgia Pacific Corp., Bellingham, Wash.[2]	Puget Sound	Discharged 10.5 lbs. per day on July 14, 1970, chlor-alkali plant; reduced load to 0.17 lb. per day on Aug. 10 to 12, 1970.
International Mining & Chemicals Co., Chlor-Alkali Division, Orrington, Maine.[2]	Penobscot River	Discharged 2.65 lbs. per day on July 14, 1970; reduced load to 0.22 on Aug. 19, 1970 (company value).
Olin Mathieson Chemical Corp., Augusta, Ga.[2]	Savannah River	Discharged 12.9 lbs. per day on May 20, 1970; reduced load to 0.51 lb. per day on July 14, 1970.
Olin Mathieson Chemical Corp., Niagara Falls, N.Y.[2]	Niagara River	Discharged 26.6 lbs. per day on July 14, 1970; reduced load to 0.38 to 0.85 lb. per day on Aug. 12 to 16, 1970 (company values).
Oxford Paper Co., Rumford, Maine[2]	Androscoggin River	Discharged 26.2 lbs. per day on July 14, 19[illegible]; plant closed Aug. 15, 1970.
Pennwalt Chemical Co., Calvert City, Ky.[2]	Tennessee River	Discharged 1.54 lbs. per day on July 14, 1970.
Weyerhaeuser Co., Longview, Wash.[2]	Columbia River	Discharged 15.1 lbs. per day on July 14, 1970; reduction to approximately 1 lb. per day by Aug. 17, 1970 (company value).
B. F. Goodrich Chemical Co., Calvert City, Ky.	Tennessee River	Company claims reductions prior to July 14, 1970; on July 14, 1970, 0.05 lb. per day of mercury was discharged.
Olin Mathieson Chemical Corp., McIntosh, Ala	Tombigbee River	State issued statement that discharges were substantially reduced, July 13, 1970; on July 14, 1970, 0.12 lb. per day of mercury was discharged.
Stauffer Chemical Co., Axis, Ala	Mobile River	State issued statement that discharges were substantially reduced, July 13, 1970; on July 14, 1970, 0.07 lb. per day of mercury was discharged.
Allied Chemical Co., Moundsville, W. Va.	Ohio River	Discharged 3.7 lbs. per day on July 15, 1970, reduced load to 0.5 to 1 lb. per day on Aug. 28, 1970 (company value).
Diamond Shamrock Chemical Co., Deer Park, Tex.	Houston Ship Channel	Discharged 13.2 lbs. per day on May 15, 1970; reduced load to 1.72 to 6 lbs. per day on July 18 to 27, 1970; on Sept. 1, 1970, discharge reduced to 1 to 2 lbs. per day and expects to reach less than 0.5 lb per day by Oct. 15, 1970 (company value).
General Aniline & Film Corp., Linden, N.J.[3]	Arthur Kill	Discharged 29.2 lbs. per day on July 17, 1970; reduced load to 6.7 lbs. per day on Aug. 7, 1970.
Olin Mathieson Chemical Corp., Charlestown, Tenn.	Hiawassee River	Discharged 2.2 lbs. per day on July 16, 1970; reduced load to 1 lb. per day on Aug. 26, 1970 (company value).
PPG Industries, Natrium, W. Va	Ohio River	Discharged 4 lbs. per day on July 15, 1970; reduced load to 0.5 to 1 lb. per day on Aug. 28, 1970 (company value).

[1] Firms subject to State action.
[2] Firms subject to Federal suit under 1899 Refuse Act.
[3] Firm subject to 180-day notice abatement action under Federal Water Pollution Control Act.

KNOWN MERCURY DISCHARGERS (ANALYSIS POSITIVE), AS OF SEPT. 4, 1970—Continued

Name and address	Receiving waters	Remarks
Riegel Paper Co., Riegelwood, N.C.	Cape Fear River	Discharged 6.32 lbs. per day on July 17, 1970; reduced load to 0.59 lb. per day on Aug. 10, 1970 (company value).
Westinghouse, Fairmont, W. Va.	Monongahela River	Early analyses not available; sediment analyses indicate previously higher discharges; on July 15, 1970, 0.19 lbs. per day was discharged.
Olin Mathieson Chemical Corp., Saltsville, Va.	North Fork Holston River	Early analyses not available; sediment analyses indicate previously higher discharges; on Aug. 12, 1970, 0.58 lb. per day was discharged.
Wyandotte Chemical Co., Port Edwards, Wis.	Wisconsin River	Early analyses not available; sediment analyses indicate previously higher discharges; on July 27, 1970, 0.08 lb. per day was discharged.
NASA, Lewis Research Center, Cleveland, Ohio.	Rocky River	Early analyses not available; sediment analyses indicate previously higher discharges; on July 21, 1970, 0.02 lb. per day was discharged.
Aluminum Co. of America, Point Comfort, Tex.	Lavaca Bay	Early analyses not available; sediment analyses indicate previously higher discharges; on July 29 to Aug. 2, 1970, 1.96 to 1.45 lbs. per day were discharged.
PPG Industries, Lake Charles, La.	Bayou d'Inde	Discharged 26.5 lbs. per day on July 20, 1970; on Sept. 1, 1970, no mercury being discharged; using a temporary lagoon; permanent facilities are to reduce loading to less than 0.05 lb. per day by Sept. 30, 1970 (company report).
Hooker Electro-Chemical Co., Niagara Falls, N.Y.	Niagara Falls sewer system and Niagara River.	Discharged 1.34 lbs. per day on July 23, 1970; company will report improvement—Sept. 18 reporting date.
Monochem, Inc., Geismar, La.	Mississippi River	Discharged 0.91 lb. per day on July 18, 1970; Sept. 2, 1970, load less than 0.25 lb. per day (company report).
Woodbridge Chemical Co., Woodbridge, N.J.	Berrys Creek, to Hackensack River	Sample of a discharge on Aug. 12, 1970; indicated 2.08 lbs. per day of mercury. (Subject to further investigation.)
Chesebrough Ponds, Inc., Falchney Inst. Co., Watertown, N.Y.	Black River, to Lake Ontario	On Aug. 5, 1970, 1.50 lbs. per day of mercury were being discharged. (Subject to further investigation.)
Buckeye Cellulose Corp., Memphis, Tenn.	Wolf River, to Mississippi River	Discharged 0.10 lb. per day on Aug. 13, 1970.
Allied Chemical Co., Buffalo, N.Y.	Buffalo River, to Lake Erie	Discharged 0.66 lb. per day on July 27, 1970.
Buckman Laboratories, Memphis, Tenn.	Lateral sewer to Wolf River interceptor, to Mississippi River.	Discharged 0.06 lb. per day on Aug. 11, 1970.
Chapman Chemical Co., Memphis, Tenn.	Non Connah Creek, to Mississippi River.	Discharged 0.09 lb. per day on Aug. 14, 1970.
Williams Gold Refining Co., Buflalo, N.Y.	City of Buffalo STP, to Niagara River.	Discharged 0.001 lb. per day on July 30, 1970.
Hill Air Force Base, Ogden, Utah	North Davis Co. STP	Discharged 0.005 lb. per day on Aug. 6, 1970.
Monsanto Chemical Co., Texas City, Tex.	Galveston Bay	Discharged 0.45 lb. per day on Aug. 1, 1970.
Garrett-Callahan Co., Millbrae, Calif.	Millbrae STP, to San Francisco Bay	On Aug. 5, 1970, found to be discharging a small amount of concentrated waste.
General Mercury Corp., Tempe, Ariz.	Ground water (via leach field)	On Aug. 14, 1970, found to be discharging a small amount of concentrated waste (equivalent to 0.001 lb. per day).
NOSCO Plastics, Erie, Pa.	City of Erie STP, to Lake Erie	Discharged 0.002 lb. per day on July 28, 1970.
Malinckrodt Chemical Works, Erie, Pa.	City of Erie STP, to Lake Erie	Calculated to be discharging 0.051 lb. per day on July 28, 1970 (load determined by subtracting NOSCO Plastics load from combined NOSCO-Malinckrodt load).
General Electric Chemical Products Plant, Cleveland, Ohio.	Lake Erie	Discharged 0.003 lb. per day on Aug. 20, 1970.
Quicksilver Products, San Francisco, Calif.	City of San Francisco STP to San Francisco Bay.	On Aug. 5, 1970, found to be discharging a small amount of concentrated waste (equivalent to 0.004 lb. per day).
General Electric Co., Edmore, Mich.	Cedar Lake, to Pine River	Discharged 0.002 lb. per day on Aug. 3-4, 1970.
Pioneer Paint & Varnish, Tucson, Ariz.	Santa Cruz River	Discharged 0.006 lb. per day on Aug. 21-22, 1970.
Reactive Metals, Inc., Ashtabula, Ohio.	West Branch Fields Brook to Fields Brook to Ashtabula River.	Discharged 0.199 lb. per day on Aug. 3-4, 1970.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 2, 1970.

Lt. Gen. F. J. CLARKE,
Chief of Engineers,
Corps of Engineers,
Washington, D.C.

DEAR GENERAL CLARKE: Enclosed is a list, prepared by the Federal Water Quality Administration, of 50 "known mercury dischargers."

We would appreciate your advising us which of these have permits to make such discharges under the Refuse Act of 1899.

As to those which do not have such permits, we urge that the corps notify each of them promptly about the requirements of the act and to apply for permits under the act and the corps' new regulations.

Please advise us of your action on this matter.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 31, 1970.

Mr. DAVID D. DOMINICK,
Commissioner, Federal Water Quality Administration,
Department of the Interior, Washington, D.C.

DEAR MR. DOMINICK: Yesterday, according to a story in today's Washington Post, Murray Stein, Assistant Commissioner for Enforcement of FWQA, testified at a Senate subcommittee hearing that "Our preliminary results show there are substantial amounts" of lead and arsenic in various waterways. He also said that FWQA would furnish the results of its studies to that subcommittee in 10 days.

In addition to the questions and points raised in this subcommittee's letter to you of July 29, 1970, concerning mercury pollution, we would appreciate your prompt response to the following:

1. Please provide to us copies of the information FWQA provides to the Senate subcommittee.

2. Please provide the information requested on the attached table.

3. (*a*) What minerals when discharged into a waterway are known or considered to be toxic or hazardous to (i) humans, (ii) marine fish, (iii) fresh water fish, and (iv) both marine and fresh water life?

(*b*) Which of these mineral discharges are less toxic to fish life when discharged into hard water?

4. (*a*) How do these minerals, when discharged into a municipal sewage system, affect the operation of municipal waste treatment plants?

(*b*) Please furnish to us two copies of each study conducted by or for FWQA on these effects.

5. We understand that sludge from a treatment plant at Harvey, Ill., when recently used on farmland as fertilizer, adversely affected the crops thereon because of minerals in the sludge.

(*a*) Please provide to us the details about this incident.

(*b*) Does FWQA have information concerning similar occurrences arising from the use of mineral-containing sludge? If so, please provide such information to us.

6. Please inform us when FWQA provided or will provide to the Corps of Engineers the information about discharges on the attached table so that the corps can require such dischargers to obtain permits under the 1899 River and Harbor Act or cease such discharges.

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

DISCHARGERS OF TOXIC OR HAZARDOUS MINERALS (OTHER THAN MERCURY) INTO WATERWAYS, JANUARY 1960 THROUGH JULY 1970

Name and address of each discharger (1)	Product manufactured (2)	Name of waterway and location of each point of discharge by each discharger (3)	Types and amounts of minerals discharged by such discharge in such waterway per day (4)	Is each such discharge subject to water quality standards under sec. 10(c) of FWPC Act (33 U.S.C. 466g(c))? (5)	Is the discharger complying with such standards? (6)	Is the discharge considered to be toxic or hazardous to humans? (7)	Is the discharge considered to be toxic or hazardous to aquatic life? (8)	Has FWQA disseminated information or otherwise warned the public or local government about such discharges (If "Yes," give date and to whom)? (9)	If answer to (9) is "No," state why not (10)

U.S. Department of the Interior,
Federal Water Pollution Control Administration,
Washington, D.C., September 24, 1970.

Hon. Henry S. Reuss,
Chairman, Conservation and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

Dear Mr. Reuss: This is in response to your letter of July 31, 1970, requesting information on the discharge and effects of various metals and minerals in the aquatic environment.

Our answers to the six specific questions and points you raise are given seriatim:

1. Please provide to us copies of the information FWQA provides to the Senate subcommittee.

Enclosed are copies of two FWQA reports on the hazards and effects of lead and arsenic in the environment which were provided to the Senate Subcommittee on Energy, Natural Resources, and Environment. To date, this is the only nontestimonial information made available to that subcommittee on heavy metals other than mercury.

2 and 3. Please provide the information requested on the attached table. 3. (*a*) What minerals when discharged into a waterway are known or considered to be toxic or hazardous to (i) humans, (ii) marine fish, (iii) fresh water fish, and (iv) both marine and fresh water life? (*b*) Which of these mineral discharges are less toxic to fish life when discharged into hard water?

Because of the substantial backleg of mercury analyses and plant visits yet to be completed and the priority set on mercury discharges because of their potential toxicity, FWQA has recently begun investigations of the effects and discharge sources of other metals or minerals. For this reason, we are unable to complete the table you have submitted or provide comprehensive data on the toxicity of such materials when discharged to water. When the data you have requested becomes available, we will be happy to provide it to you. It should be noted that under section 12 of the Federal Water Pollution Control Act, entitled "Control of Hazardous Polluting Substances," a Presidential report must be submitted to Congress by November 1, 1970, denominating hazardous materials in the aquatic environment and setting forth whether additional legislation controlling the discharge of hazardous or toxic materials is required. This report, presently in preparation by the Department of Transportation, in consultation with FWQA and other agencies will in part identify toxic and hazardous materials in the aquatic environment.

A symposium was conducted under the auspices of the Coast Guard in New Orleans on September 14–16, 1970, at which extensive public discussions were held concerning toxic and hazardous materials discharged to water. In addition, considerable FWQA efforts are being directed toward developing a rationale for the categorization of toxic or hazardous materials discharged to water. This rationale will include such traditionally recognized toxicants as materials listed as economic poisons under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 et seq., and materials registered under 46 CFR 146 as Class A, B, C, and D poisons, as well as methods for the recognition of materials not presently included within such existing classifications or substances developed and marketed in the future. It should be noted, however, that scientific data relating specifically to toxicity of such materials when present in the water environment are very minimal.

4. (a) How do these minerals, when discharged into a municipal sewage system, affect the operation of municipal waste treatment plants? (b) Please furnish to us two copies of each study conducted by or for FWQA on these effects.

Existing knowledge relating to the effects of specific minerals or metals discharged to municipal waste treatment plants is sparse, nor has FWQA any studies or reports upon such effects. In a normally operating municipal plant, however, where concentrations of heavy metals or other toxic materials are not excessive, such substances have not caused particular difficulties with the operation of the treatment facility. Although it is difficult to generalize, a large proportion of these substances, particularly heavy metals, are removed with the sludge during the sedimentation process. Where the substances are dissolved or are in exceedingly large concentrations, the possibility of interference with secondary biological treatment processes exists, particularly when these materials are in a form toxic to bacteria essential to the process.

5. We understand that sludge from a treatment plant at Harvey, Ill., when recently used on farm land as fertilizer, adversely affected the crops thereon because of minerals in the sludge. (a) Please provide to us the details about this incident. (b) Does FWQA have information concerning similar occurrences arising from the use of mineral-containing sludge? If so, please provide such information to us.

FWQA has no information or reports on adverse crop effects caused by contaminants in the Harvey, Ill., waste treatment plant sludge nor are we aware at present of any similar occurrences elsewhere. We will have our technical staff investigate the problem of mineral concentrations in sludges used as fertilizer and prepare a report to be forwarded to you.

6. Please inform us when FWQA provided or will provide to the Corps of Engineers the information about discharges on the attached table so that the corps can require such discharges to obtain permits under the 1899 Rivers and Harbors Act or cease such discharges.

As noted above, FWQA data collection on discharges of toxic and hazardous materials other than mercury is just beginning. When such data as well as the background studies delineating the toxicity of such substances becomes available, you may be assured that enforcement efforts will be quickly coordinated with the appropriate Federal agencies.

Sincerely yours,

David D. Dominick, *Commissioner.*

Enclosure.

Hazards of Arsenic in the Environment, With Particular Reference to the Aquatic Environment

(Prepared by the Technical Support Division, Office of Operations, Federal Water Quality Administration, August 1970)

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ABSTRACT

Arsenic is widely distributed in nature. The average concentration in sea water has been reported as 0.003 p.p.m. Levels are quite variable, however, because arsenic is usually present wherever any metal sulfides occur, and normally is not removed from the high levels present in pesticides and detergents before wastes from these materials reach local waterways and the coastal zone. Arsenic concentrations in water in and around Lawrence, Kans., was reported as ranging from 0.4 p.p.b. to 8 p.p.b., with tapwater ranging from the lower level of detection 0.4 p.p.b. to 0.5 p.p.b. The U.S. Public Health Service drinking water standards set a maximum concentration of 0.05 mg./1 for arsenic. At the present time there are no tolerances established for arsenic in seafood.

In general the organic arsenicals are not as toxic to man as the inorganic forms and organic arsenicals are not common in the environment. Acute inorganic arsenic poisoning results in violent gastroenteritis, fatty degeneration of cells, disturbances of nutrition and metabolism and in some cases direct paralysis of the heart. Chronic poisoning may cause indefinite symptoms of illness such as nephritis, neuritis, and so forth. Arsenic is a cumulative poison which slowly builds up in the body to levels that may not be detectable for 2 to 6 years or longer.

Arsenic in some form has been shown to be toxic at various concentrations to organisms in most levels of the aquatic food chain. Concentrations of arsenic reported as toxic to fish contrasted against concentration reported as tolerable show relatively small differences for most forms. More long-term study is required because arsenic is readily concentrated by marine organisms. No safe levels for natural waters are reported.

Production of arsenic as a by-product in the smelting of lead, copper, and gold ores far exceeds the demand. Prior to 1959 the U.S. consumption of white arsenic varied between 13,000 and 40,000 short tons per year. No consumption statistics have been published since 1959. Disposal of the large quantities of arsenic they produce is a major problem of mining industries.

INTRODUCTION

Arsenic has gained notoriety as a poison—figuring in Renaissance political plots and in modern fiction. Arsenic trioxide, or "white arsenic," was first discovered in the eighth century by an Arab alchemist. Use of the compound added new dimensions to the poisoner's craft, because its presence was difficult to detect. The symptoms that resulted from "white arsenic" intoxication were not likely to arouse suspicion, because they often resembled the symptoms of nephritis, neuritis or general gastrointestinal disorders. More sophisticated procedures for detecting arsenic have greatly reduced the incidence of intentional arsenic poisoning.

Arsenic and its related compounds are often used in the United States. Various insecticides and herbicides contain the element. Other common uses for arsenic include detergents, ammunition, glass manufacture and pigment production. The element is often found in association with sulfur-bearing coal and can be released to the air when the fuel is combusted.

DISTRIBUTION OF ARSENIC IN NATURE

The average abundance of the element arsenic is 1.8 parts per million in the earth's crust (Krauskopf, 1967). Arsenic is present in seawater at an average concentration of 0.003 ppm (Krauskopf, 1967).

Junkins (1963) has compiled the following review of the distribution of arsenic: "Arsenic is widely distributed in nature. It most commonly occurs as a pyrite (FeAsS), but usually is present wherever any of the metal sulfides occur. The primary commercial sources or arsenic are copper and lead ores. Arsenic is recovered as a byproduct during the smelting process.

"Arsenic is also redistributed in nature indirectly. The mining and smelting of ores and the burning of coal are examples.

The arsenic content of soils varies from less than one part per million to as much as 40 parts per million (Vallee et al., 1960).

"The concentration in sea water apparently varies from about 1 to 50 micrograms of arsenic per liter (Smales ad Pate, 1952), Gorgy et al. (1948) reported 15 to 50 micrograms of arsenic per liter in the Pacific Ocean. More recent results indicate lower values: 2.5 to 6.6 micrograms of arsenic per liter in the Pacific (Ishibashi, 1954), and in the Atlantic Ocean near Great Britain, 1.6 to 5 micrograms per liter (Harvey, 1955). The Atlantic Ocean near the Canadian shore was reported to contain about 2 micrograms per liter (Young and Langille, 1958). It is not clear whether arsenic content of the ocean varies systematically. Most of the arsenic found in sea water (40 to 60 percent) is inorganic and usually considered to be in the form of arsenic (Smales and Pate, 1952; Gorgy et al., 1948).

"Early investigations of the arsenic content of sea water were undertaken as a supplement to studies of the arsenic content of edible marine organisms. The work was stimulated by an outbreak of arsenical poisoning near the turn of the century. Analytical techniques at the time were rather crude. The sensitivity was adequate for the determination of arsenic in marine organisms, which was present in tens of parts per million. However, the application of these techniques to sea water entailed evaporation of large sample volumes yielding results which were of doubtful validity and often contradictory."

ARSENIC IN THE ENVIRONMENT

Sources of Arsenic to the Environment

Sources of arsenic to the aquatic environment include national deposits, industrial discharges, acid mine drainage, pesticides, lead shot, combustion of sulfur-bearing coals, detergents, smelting of lead, copper, and gold ores.

Arsenic in detergents may be one of the more significant sources to the aquatic environment. Magnuson et al. (1970) found arsenic at a concentration of 10 to 70 p.p.m. in several common presoaks and household detergents. Analysis of laundry products by FWQA have revealed arsenic concentrations ranging up to 36 p.p.m. According to Magnuson et al. (1970), waste treatment processes now used in many sewage or waste effluents plants do not remove arsenic. Therefore, much of the arsenic from laundry products would be discharged to local waterways.

Sulfuric acid made from sulfide ores probably contains arsenic. The arsenic either remains in the acid or is removed at the sulfuric acid plant and probably appears in the wastewater streams. Hence arsenic could occur in the waste streams or manufactured product of any industry using low grade sulfuric acid.

Because arsenic is soluble in acids, acid mine drainage containing arsenic from active and abandoned coal mines is likely. Coals bearing sulfide and shale impurities are potential sources. The concentrations of arsenic in typical acid mine waters is unknown, because iron interferences have prevented the accumulation of representative data. The large quantities of arsenic-based pesticides utilized across the country can be important sources of arsenic contamination to the aquatic habitat.

Finally, immense quantities of sulfur-bearing coals are burned for power production in the United States, and this industrial source of arsenic should not be overlooked. Fly ash and stack scrubber drainage and storm runoff from the power-plant compound could contain arsenic.

In natural waters, arsenic is most often found as an anion, either as arsenate (AsO_4^{---}) or arsenite (AsO_2^-). In sea water it supposedly exists largely as arsenite (Hutchinson 1957).

Large quantities of sodium arsenite have been applied to the aquatic habitat as herbicides to control aquatic plants. Some extensive studies have been conducted to determine the fate of their application. Mackenthun (M.S.) studied Pewaukee Lake near Milwaukee which had received 218,000 pounds of As_2O_3. He stated: "If retained and evenly distributed over the entire lake, the chemical would amount to 87 lbs. per acre or 380 p.p.m. in the uppermost 1 inch of bottom. We found bottom samples to have an As_2O_3 content ranging from 10 to 82 p.p.m. with a mean of 49 p.p.m. It appears that much arsenic will be stored in lake and river bottoms."

Lawrence (1957) studied the application of sodium arsenate to farm ponds. He reported: "Chemical analyses of the water from ponds treated with 4 p.p.m. As_2O_3 as sodium arsenite indicated a uniform distribution (approximately 3 p.p.m. As_2O_3) of arsenic in the upper 2.5 feet of water within 24 hours after treatment. The amount of soluble arsenic was rapidly reduced by organic and inorganic combination and, at the end of 24 days after treatment, the concentration from the surface to a depth of 12 feet ranged from 0.3 to 0.8 p.p.m. As_2O_3."

Dupree also studied the arsenic content of water and soil treated with sodium arsenite. He found high initial concentrations after 24 hours ranging up to 2.6 p.p.m. Approximately 10 months later no arsenic was detected in the water. More important were Dupree's measurements of sodium arsenite content in 1956 for small ponds that had been drained and refilled from 2 to 3 times after treatment with sodium arsenite in 1955. He found sodium arsenite content in water ranging up to .3 p.p.m.; in plankton up to 714 p.p.m.; and in bottom soil ranging up to .38 p.p.m. It would seem that under many conditions arsenic is released from bottom muds and can be a source of arsenic to water and the biota for a considerable period after application.

Lawrence (1957) found that arsenic replaced phosphorus in bottom muds and perhaps plankton: "In one large pond treated with sodium arsenite, the phosphorus content of the water increased from a trace immediately prior to treatment to approximately 0.6 p.p.m. 5 days later. Similar results were obtained in other ponds treated with sodium arsenite. It would appear that the arsenic replaced phosphorus in the bottom muds and perhaps in the plankton as well. There was no death of plants during this period to account for this release of phosphorus.

"It is probable that this increase in soluble phosphorus partially explains why ponds treated with sodium arsenite often produce a heavy plankton growth within a few days after treatment."

Arsenic like many other toxic substances can be biologically concentrated and magnified through food chains.

Lowman (1970) summarized concentration factors for arsenic in the marine environment:

Organism:	*Concentration factor*
Benthic algae	2,000
Mollusc muscle	650
Crustacean muscle	490
Fish muscle	700

Junkins (1963) also summarized data relative to concentration of arsenic by aquatic organisms and residues of arsenic in fish:

"Arsenic is concentrated by some of the marine organisms. Various species of seaweed also on the coast of Nova Scotia concentrate arsenic to 200 to 600 times the abundance in the sea water of 0.002 part per million; range of 5 to 94 parts per million was observed in 11 species of algae; and 4 to 14 parts per million occured in most species of seaweeds except *Phaeophyceae*, which range from 30 to 70 parts per million. No seasonal trends were noted in monthly analyses which extended over a 15-month period (Young and Langille, 1958).

"Marine organisms with a higher trophic level also contain significant concentrations of arsenic accumulated through feeding on the primary concentrators. The arsenic content of edible tissue from samples along the British Isles is as much as three parts per million in oysters and as high as 174 parts per million in shrimp (Chapman, 1926). Shrimp along the southeastern coasts of the United States contain up to 42 parts per million of arsenic (Coulson et al., 1935).

"* * * It has been shown that fish concentrate arsenic from the trace quantities which are present naturally. Largemouthed black bass (*Huro floridana*) from the southeastern coasts of the United States contain as much as 40 parts per million in the liver and extractable oils (Ellis et al., 1941). Fish from the Bengal River in India are also rich in arsenic (Bagchi and Ganguly, 1941).

"Apparently the extent of arsenic concentration by fresh water fish varies markedly with limnological conditions. Calico bass (*Pamoxis sparoides*) from Cassadaga Lake in New York (Ullmann et al., 1961) contained less than 0.1 parts per million of arsenic on the average, with a maximum concentration of 0.14 parts per million. The lake water had concentrations of arsenic ranging from 0.04 to 0.10 parts per million during the year preceding this study. Presumably the arsenic content of the lake was naturally occurring arsenic. Hence, the calico bass in the particular environment of Cassadaga Lake showed only a slight tendency to concentrate arsenic."

Lucas (M. S.) recently found arsenic concentrations in whole fish from the Great Lakes to range up to 0.043 parts per million with an average of 0.016 parts per million.

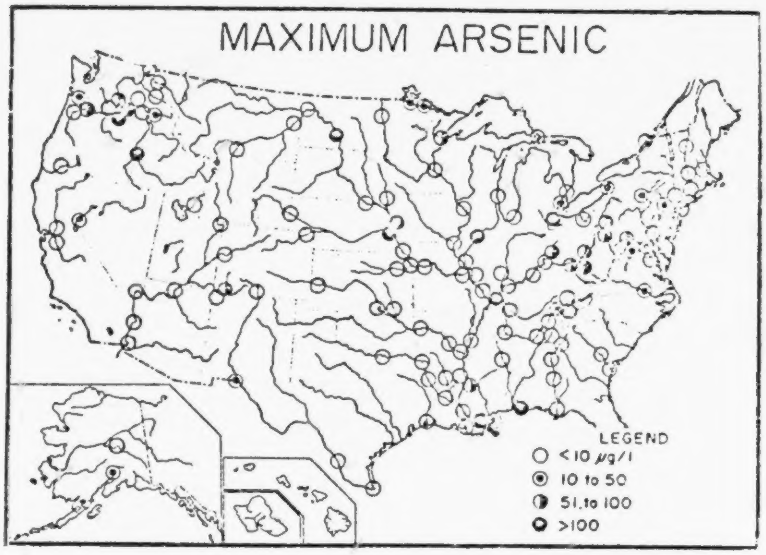
Coulsun et al. (1935) found that shrimp along the northeastern coasts of the United States contain arsenic in a complex organic form with arsenic content ranging up to 42 parts per million.

Undoubtedly the form in which arsenic is accumulated in seafood, organic versus inorganic and pentavalent versus trivalent forms, will influence its toxicity when ingested by man or other animals.

ARSENIC CONTENT IN U.S. SURFACE WATERS

Gunnerson (1966) summarized results from the water quality surveillance system for the period 1957–65 and the following is included from his publication.

FIGURE 1



In some streams arsenic concentrations could be approaching high levels. **Magnuson et al. (1970)** reported arsenic concentrations in water at Lawrence, Kans. The following table is abstracted from their publication:

TABLE A.—ARSENIC CONCENTRATION (P.P.B.) IN WATER IN LAWRENCE KANS.; THE U.S. PUBLIC HEALTH SERVICE MANDATORY MAXIMUM IS 50 P.P.B.; THE RECOMMENDED MAXIMUM IS 10 P.P.B.

Sample	Average	Range
Input, Lawrence water plant	3.1	2.6 to 3.6.
Lawrence tap water [1]	.4	.4 to 0.5.
Raw sewage (Lawrence plant) input	2.7	2.0 to 3.4.
Treated sewage (Lawrence plant) output to river	1.	1.5 to 2.1.
Kansas River at Lawrence	[2] 3.3	
Kansas River at Topeka	8.0	

[1] Lawrence water treatment includes "cold-lime softening"; the value of 0.4 p.p.b. is at the lower limit of detection.
[2] Single determination.

SAFE LIMITS FOR ARSENIC

In 1942, the U.S. Public Health Service Drinking Water Standards set a maximum concentration of 0.05 p.p.m. for arsenic. The U.S. Public Health Service 1962 Drinking Water Standards stated:

"In light of our present knowledge concerning the potential health hazard from the ingestion of inorganic arsenic, the concentration of arsenic in drinking water should not exceed 0.01 mg./l and concentrations in excess of 0.05 mg./l are grounds for rejection of the supply."

Conventional methods for treating water supplies have little effect on removing arsenic. Magnuson et al. (1970), found that at an initial arsenic concentration of .200 p.p.m., cold-lime softening treatment removed 85 percent of the arsenic and charcoal filtration removed 70 percent.

At the present time, there are no tolerances established for arsenic in seafoods. Inasmuch as arsenic is readily concentrated by marine organisms, there is great need for such guidelines for arsenic in seafood.

TOXICITY OF ARSENIC—EFFECTS ON MAN

Pharmacology

The pharmacology of arsenicals falls into two major categories; namely, inorganic and organic arsenic compounds. The latter type has been used extensively in chemotherapy, especially against protozoan infections, before the advent of antibiotics and other more effective pharmaceuticals. In general, the organic arsenicals are not as toxic to man as the inorganic forms and organic arsenicals are not common in the environment. This discussion will address itself principally to the inorganic arsenic compounds.

Arsenicals act locally as mild and slow corrosives. Systemically, they relax the capillaries and increase their permeability; thus, stimulating inflammation. This change is most conspicuous in the visceral area. In acute arsenic poisoning, it results in violent gastroenteritis, closely resembling cholera. The dilation of capillaries introduces changes in the circulation which cause secondary disturbances in the function of more remote organs, particularly in the nervous system. Fatty degeneration of the cells is seen, especially in glands and muscles, with other disturbances of nutrition and metabolism, particularly in chronic poisoning. There may also be a direct paralysis of the heart.

Arsenic trioxide, As_2O_3, or "white arsenic" was formerly used extensively for criminal poisoning. It is readily obtainable, and is easily administered without suspicion, since it is ordorless and nearly tasteless. The symptoms also are not likely to arouse suspicion—the acute and subacute course resembling that of a severe gastrointestinal upset. Repeated graduated administration may cause indefinite symptoms of illness, such as nephritis, neuritis, and so forth.

Specific physiological reactions

A. Acute arsenic poisoning

The symptoms of acute arsenic poisoning start with vomiting and profuse and painful diarrhea. The withdrawal of water from the body leads to great thirst, dryness of the mouth and throat, and difficulty in swallowing and articulation. The nervous symptoms consist of vertigo, headache and pain in the limbs. The patient is cyanotic, with cold extremities. Toward the end, syncope, coma, clonic and toxic spasms and general paralysis occur. Death usually occurs by exhaustion as a result of the prolonged gastroenteritis, as in cholera.

B. Subacute and chronic arsenic poisoning

Subacute and chronic arsenic poisoning may produce chronic gastrointestinal catarrh, sometimes ulcerative; some kidney injury and degeneration; considerable tendency to edema; swelling of the eyelids as an early indication of high intake; and liver injury involving swelling of fatty tissue leading possibly to acute and fatal hepatitis. Subacute and chronic arsenic poisoning may occur, but be diagnosed as another ailment. Where lead arsenate has been ingested, an unfavorable synergistic action may result from the two elements.

C. Toxicity of arsenicals

Arsenic is toxic to all animals which have a central nervous system; also to most of the higher plants, but not all lower organisms. The mortality in acute clinical arsenic poisoning is high, 50 to 75 percent. The fatal dose varies, especially with the solubility of the preparation. Of the trioxide, As_2O_3, 5 to 50 mg. are toxic; 0.06–0.18g. or 1–3 grains are usually fatal. However, tolerance of arsenic poisoning in man and in other animals can be induced through gradual habituation.

Trivalent arsenicals, As^{+3} (arsenites), are generally much more toxic than are the pentavalent arsenic compounds (arsenates). Depending upon the route of entry into the body the toxicity decreases in the order of: arsenites, arsenates, colloidal arsenic, atoxyl, and cacodyl.

The toxicity of arsenic results from its combination with certain protoplasmic sulfhydryl groups thereby inhibiting oxidation. A considerable number of animal enzymes are sensitive to arsenic.

Absorption of inorganic arsenicals occurs readily, to some extent from the intact skin. Poisoning may reusit from the external use of arsenical cosmetic preparations and handling. Excretion occurs by all the usual channels; urine, feces, perspiration, and epithelium of the skin. Excretion is always very slow and incomplete, especially after prolonged exposure or intake, so that retention of arsenicals is considerable. The highest concentrations of such compounds are found in the liver, kidneys, and spleen. The hair has a high concentration in cases of chronic poisoning.

The following shows the relation of the inorganic trivalent and pentavalent coumpounds.

Trivalent, As^{+3}:

1. $As_2O_3 + H_2O \longrightarrow H_2As_2O_4 \longrightarrow 2HAsO_2$
(arsenous) Arsenous
(trioxide) Acid=

2. $HAsO_2 + NaCl \longrightarrow NaAsO_2$ (sodium arsenite)

Pentavalent, As^{+5}:

1. $As_2O_5 + H_2O \longrightarrow H_2As_2O_6 \longrightarrow 2HAsO_3$
(arsenic) arsenic
(pentoxide) acid, (nuta)

2. $As_2O_3 + 3H_2O \longrightarrow 2H_3AsO_4$
arsenic
acid, (ortho)

3. $H_3AsO_4 + 3NaCl \longrightarrow Na_3AsO_4 + 4HCl$
sodium arsenate

Etiology of arsenic poisoning

The most common causes of arsenic poisoning to man are:

1. Accidental or suicidal ingestion.
2. Overdosage of prolonged therapeutic use.
3. Absorption through handling and external use.
4. Ingestion of contaminated foods.

The last route presents the greatest public danger because arsenical insecticides are widely used. Arsenic is issued chiefly as Paris Green (copper acetoarsenite, $3Cu(AsO_2)_2Cu(COOCH_3)_2$, and as calcium arsenate $(Ca_3(AsO_4)_2)$, and lead arsenate $PbHAsO_4$, the latter involving the additional risks of lead poisoning as well. Lead arsenate, the most common arsenical insecticide, is relatively insoluble, but is partly hydrolyzed by water to basic lead acetate and arsenous acid and may scorch foliage.

Hazards to aquatic biota may exist because arsenicals are widely used in industry, in addition to their application in controlling insects, weeds, and rodents. The relative insolubility of arsenicals renders them potentially harmful to those organisms that accumulate such compounds in their tissue. Arsenic is a cumulative poison which slowly builds up in the body. According to some medical sources, long-term arsenosis may not be detectable for 2 to 6 years or longer.

Carcinogenesis

Sullivan (1969) states that the possibility that arsenic induces cancer, makes the present levels of arsenic compounds in the air a matter of concern.

"As early as 1820, arsenical compounds were suspected of carcinogenic action. This impression was based on the observation that skin cancer frequently occurred following therapeutic administration of arsenic for psoriasis and other disorders. According to Buchanan, nearly all of these cases of skin cancer followed a prolonged period of medicinal administration (averaging 18 years) of inorganic trivalent arsenic. He states that cancer frequently (80 percent of published cases) follows the nonmalignant manifestation of keratosis, commonly on the palms of the hands or soles of the feet.

"In 1963, Heuper listed arsenic as one of the recognized human carcinogens. The skin, lung, and liver were listed as recognized sites of arsenic cancers, and the mouth, esophagus, larynx, and bladder as suspected sites.

"The role of arsenic as a respiratory carcinogen has received some support from the finding of above-average mortality from lung cancer in South Rhodesian miners of gold-arsenical ores and the frequent occurrence of lung cancer in German vineyard workers exposed to lead arsenate dust.

"In opposition, Frost argued that the carcinogenic action was inappropriately attributed to arsenic because of the tendency to specify arsenic as the carcinogen even when other materials were present. Nickel in particular, appears to be a carcinogen which occurs together with arsenic in industrial dusts. The strongest arguments against arsenic as a carcinogen are the failure to show increased prevalence of cancer among industrial workers and failure to induce cancer in experimental animals.

"Snegireff and Lombard examined the records of two industrial plants in relation to the number of employees who died of cancer. In a plant where the workers were exposed to arsenic, 18 of 146 deaths (12.3 percent) were caused by cancer. In the second plant, where the workers were not exposed to arsenic, 12 of 109 deaths (11 percent) were caused by cancer. The authors concluded that there was no significant difference in cancer mortality between plant employees who handled arsenic and those who were not exposed.

"In another study, Pinto and Bennett compared the mortality of employees who handled arsenic for the American Smelting and Refining Company at Tacoma, Wash., with those who were not exposed to arsenic. (This smelter is the only plant presently producing arsenic commercially in the United States * * *.) They observed that 6 of 38 deaths (15.8 percent) among workers who were exposed to arsenic trioxide were caused by cancer, while 37 of 191 deaths (19.4 percent) were due to cancer among workers not exposed to arsenic. The evidence that the arsenic workers excreted an average of 820 μg/liter of arsenic of urine compared to 130 μg/liter for unexposed workers. The authors found no evidence that arsenic trioxide caused systemic cancer or fatal cardiovascular disease in humans.

"Attempts to demonstrate through animal studies that arsenic is carcinogenic have often met with failure. In fact, one study showed that arsenic suppressed the appearance of spontaneous tumors of the lung. However, a few cases have been reported in which arsenical cancer was induced in animals.

"Some investigators have mentioned that the type of arsenic compounds involved may play a role in the carcinogenesis. Cornelius and Shelley suggest that arsenic trioxide to which most smelter workers are exposed is probably not as carcinogenic as other soluble arsenic compounds."

EFFECTS ON FISH AND WILDLIFE

McKee and Wolf (1963) have summarized the effects of arsenic compounds on fish and aquatic life. The summary is quoted below.

"The following concentrations of arsenic have been reported as toxic to fish:

"Concentration of arsenic, mg/l	Time of exposure	Type of fish	Reference
1.1		Fish	353, 465
1.1 to 2.2	2 days	Pike perch	2,977
2.2	3 days	Bleak	2,977
3.1	4 to 6 days	Carp	2,977
3.1	3 days	Eels	2,977
4.3	11 days	Crabs	2,977
7.6	10 days	Bass	311
11.6	36 days	Minnows	617
15.0		Crappies and bluegills	900
17.8		Minnows	2,962
60.0	16 hours	do	617
234.0		do	2,962

"In contrast, the following concentrations have been reported as tolerable within the period specified:

"Concentration of arsenic, mg/l	Time of exposure	Type of fish	Reference
0.7 to 1.1	48 days	Pike perch	2977
0.76		Fish	677
1.1 to 1.6	11 days	Bleak	2977
1.5 to 5.3	1 to 7 days	Fish	353
2.2	13 days	Carp	2977
2.2	do	Eels	2977
3.1	90 days	Crabs	2977
5.3	24 to 148 hours	Fish	313, 778, 1009
6.0	232 hours	Bass	900
7.6	30 days	Trout	1012
13.0	1 hour	Minnows	353

“With respect to lower forms of aquatic life, arsenic concentrations of 3–14 mg/l have not harmed mayfly nymphs and 10–20 mg/l have been harmless toward dragon and damsel flies. Concentrations of 2–4 mg/l of arsenic are reported not to interfere with the self-purification of streams. Bacteria grow even in the presence of 10,000 mg/l of potassium arsenate and algae are not killed at 1000 mg/l of arsenate. The fermentation and propagation of yeast are stopped at 300 mg/l of arsenate.

“Arsenic–76 occurs in the effluent from nuclear reactors and may be concentrated to a limited extent in the aquatic food chain.

“The Mersey and Severn River Boards in England have adopted working standards limiting the total concentration in effluents of all heavy metals, including arsenic, to 1.0 mg/l.

“*Lead arsenate*

“A concentration of 25 mg/l of lead arsenate has killed trout within 24 hours, but a concentration of 17.1 mg/l in stabilized tapwater did not harm minnows during a 1-hour exposure.

“*Sodium arsenate*

“It is not highly toxic to fish or other aquatic life. According to Jones the lethal concentration of sodium arsenate toward minnows at 16–20°C. is 234 mg/l, as arsenic. It has also been reported that minnows survived for 16 hours in a solution of sodium arsenite equivalent to 250 mg./l of arsenic.

“Toward lower forms of aquatic life, the toxicity of sodium arsenate is variable. The threshold concentration for immobilization of *Daphnia magna* in Lake Erie water has varied from 18 to 31 mg./l as sodium arsenate, or 4.3 to 7.5 mg./l as arsenic. The toxic threshold for the flatworm *Polycelis nigra*, is reported to be 670 mg./l as AsO_4, or 361 mg./l as arsenic.

“*Arsenic trioxide*

“The following concentrations of arsenic trioxide have been harmful to fish or other aquatic life.

“Concentration of arsenic trioxide in mg/l	Time of exposure (days)	Type of organism	Reference
1.96		Chironomus	574, 108
2 to 3		Fish food organisms	1007
2.5		do	311
2.5 to 4		do	313
5.3	8	Pink salmon	2091
10		Fish	1011
10	10	Bass	311
10		Bass, bluegills, crappies	3005
16	3 to 16	Mussels	313
40		Flatworms	353, 313

“Suber and Meehan carried out a comprehensive study of the toxicity of arsenic trioxide to many different fish food organisms. Their results indicated that important fish food organisms can tolerate 2.0 mg./l of arsenic trioxide.

“The following concentrations of arsenic trioxide have not been harmful to some aquatic organisms in the time specified:

“Concentration of arsenic trioxide in mg/l	Time of exposure	Type of organism	Reference
1		Fish	677
1.9		Chironomus larvae	574
2		Food organisms	353, 1008
2		Food organisms	313
2 to 6		Bass, bluegills, crappies	3005
2 to 7	1 to 7 days	Fish	353
3 to 14		Mayfly nymphs	574
5		Some zooplankton	574
5	24 hours	Trout, bluegills, sea lamprey	2976
5		Fish	353
5 to 10	15 to 30 minutes	Coho salmon	2988
7	24 to 148 hours	Fish	1009, 778, 313
8		Mussels	313
10	1 month	Trout	1012
10 to 20		Insect larvae	574
17.1	1 hour	Minnows	353

"*Sodium arsenite*

"Sodium arsenite has been used extensively as a herbicide for the control of mixed submerged vegetation in static water. Commercial sodium arsenite contains varying amounts of other arsenic compounds and impurities; hence it is labeled in terms of equivalent arsenic trioxide (As_2O_3). For the control of submerged vegetation in ponds and lakes, applications of 2 to 5 mg/l as arsenic trioxide (1.5 to 3.8 mg/l as As) have been found effective. Although these concentrations are generally considered to be safe for fish and other aquatic animals, it is advisable to spray only a part of the pond or lake at one time so that fish may avoid the sprayed area. Fish are reported to be sensitive to sublethal doses of sodium arsenite and will generally swim away into fresh water. Commercial sodium arsenite in concentrations up to 10 mg/l (arsenic content not stated) have been used for weed control in Wisconsin lakes without harm to the fish population.

"The following concentrations of sodium arsenite, expressed as arsenic, have been reported as lethal, toxic, or otherwise deleterious to aquatic organisms:

"Concentration, as arsenic, mg/l	Time of exposure	Organism	Reference
1.0 to 2.0		Fish	1692
1.4 to 2.3		Fish food organism	574, 1007
1.9 to 3.0		Midges, mayflies, amphipods	3009
4.6	48 hours	Daphnia	2158
5	10 days	Pink salmon	2091
5	48 hours	Microregma (protozoan)	3343
5.2		Daphnia magna	352
8.4	48-hour TL_m	Chum salmon fry	2900
15	48- and 72-hour TL_m	Fingerling channel catfish	2981
17.8		Minnow	2920
20	36 hours	Rainbow trout, minnows	3005
20	do	Minnows	617
27	72-hour TL_m	do	3672
27.6	24-hour TL_m	Fingerling channel catfish	2981
29	48-hour TL_m	Minnows	3672
35 to 46	48 hours	Scenedesmus	2158
45	24-hour TL_m	Minnows	3672
290	48 hours	Scherichia coli	2158

"The literature on weed control contains statements that applications of sodium arsenite up to 10 mg/l as As_2O_3 (7.6 mg/l as As) are not harmful to fish, but the foregoing table would indicate that the threshold level is somewhat lower than expected. Furthermore, fishfood organisms are susceptible at concentrations as low as 1.0 mg/l.

"On the other hand, the following concentrations of sodium arsenite, expressed as arsenic, have been reported to have no harmful effects on the organism noted:

"Concentration, as arsenic, mg/l	Time of exposure	Organism	Reference
1.3		Fish or fishfood organism	1007
1.3 to 1.5		Fishfood organisms	1007, 1008
1.4 to 2.9		Fish	416
2.9		Chironomus larvae	574
5	24 hours	Trout, bluegills, sea lamprey	2976
8 to 16		Damselflies, dragonflies, sowbugs, water mites.	3009
15	96 hours	Minnows	3672

"Lawrence reports that two applications of 4 mg/l of sodium arsenite applied 1 month apart in experimental ponds reduced the number of bottom organisms an average of 34 percent and reduced bluegill production an average of 42 percent as compared with control ponds. Two applications of 8 mg/l of sodium arsenite applied 1 month apart reduced the number of bottom organisms an average of 45 percent and bluegills 65 percent as compared with control ponds. An application 4 mg/l killed all microcrustacea and greatly reduced the population of rotifers."

Effects on stock and wildlife watering

McKee and Wolf (1963) have summarized the effects of arsenic compounds on stock and wildlife from drinking water containing arsenic compounds. Their summary is quoted below:

"In New Zealand, sickness and death among cattle have been caused by arsenic of natural origin in water supplies (1002, 1049).* The lethal dose of arsenic for animals is believed to be about 20 milligrams per animal pound (1003).* Fowl and pigs have died after eating one feed of contaminated pig meal containing 6.5 milligrams of arsenic per ounce (1004).*"

"On the other hand, selenium poisoning among cattle, dogs and chickens has been treated by feeding arsenic in concentrations of 12 to 15 milligrams/liter in water (1005); and 5 milligrams/liter arsenic in drinking water has counteracted selenium poisoning among pigs, dogs, and rats (921).*"

"In brief outline of the toxic effects of some common poisons, Wadsworth (3108)* gives the following toxic doses for arsenic:

Animal	*Toxic dose, in grams*
Fowl	0. 05–0. 10
Dogs	0. 10–0. 20
Swine	0. 5–1. 0
Sheep, goats, horses	10. 0–15. 0
Cows	15–30

For rats and mice, 96-hour LD_{50} doses of arsenic trioxide varied from 15.1 to 214 milligrams per kilogram based on oral administration (3341). Another reference (2990)* reported the LD_{50} for female rats was 298 milligrams per kilogram based on calcium arsenate, or 112 milligrams per kilogram as arsenic. The minimum lethal dose of arsenic trioxide for various laboratory animals ranged from 5 to 100 milligrams per kilogram of body weight, solution being more lethal than powders (364)*. Doses of 324 milligram have killed experimental chickens in 24 hours (1004)*.

Lead arsenate

"In doses of 1.3 to 56.7 grams per day, lead arsenate killed 18 out of 31 chickens, but the survivors showed no symptoms of poisoning. Drinking water containing about 4,800 milligrams per liter of lead arsenate caused no harm to 10 birds after a 60-day period. Toward male rats, the LD_{50} value of lead arsenate has been reported as 1,050 milligrams per kilogram. The daily consumption by one cow of 6.48 grams of lead arsenate for an unspecified period was not harmful."

U.S. ARSENITE INDUSTRY

Uses of arsenic compounds

Arsenic compounds are used in medicine, glass manufacture, pigment production, steelmaking, pesticides, insecticides, fungicides herbicides, textile printing, tanning, and taxidermy preservatives, antifouling paints, the control of sludge formation, the petroleum industry, and ammunition.

Kirk-Othmer (1963) contains this summary on the use of arsenic:

"The major use of arsenic is in the agricultural field in the form of calcium arsenate, arsenic acid, lead arsenate, and sodium arsenite. Calcium arsenate, during the past several years, has regained its position as a potent compound for the control of boll weevil infestation in cotton. Starting in 1949 there was a trend toward the use of chlorinated organic compounds for the control of boll weevils. By 1956 it was noted that the weevils had developed a resistance to the chlorinated compounds and the cotton growers were advised to change either to calcium arsenate or methylparathion.

"The demand for arsenic acid as a cotton defoliant is relatively new but over the last 2 or 3 years has assumed major proportions and now ranks second to that for calcium arsenate. The demand for lead arsenate, although still widely used, especially in the cultivation of apples is diminishing. The use of sodium arsenate in the control of weeds and as a soil sterilizer continues to hold a large portion of the market, especially in the rubber plantations of Malaya and along railroad right-of-ways in both the United States and Europe. Arsanilic acid is commonly used as a feed additive for poultry in the United States.

"Arsenic trioxide and some of its derivatives are also used in glass manufacture, cattle and sheep dips, wood preservatives, debarking of trees, crabgrass control, and aquatic weed control."

Junkins (1963) states: "Increased uses in the paper, pulp, textiles, and plastic industries are also foreseen. Some of the newer uses of arsenic are based on the nature of reactions of arsenic with organic compounds. Arsenic frequently reacts to form a compound that preserves the organic compound in its original state but adds the pesticidal properties of arsenic to the product. This phenomenon can be utilized to produce plastics which inhibit molds. Arsenic is also used in the removal of tree bark and in the manufacture of hide preservatives. Arsenic compounds have been used as pigments."

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*Numbers represent sources cited by McKee and Wolf.

V. COMMERCIAL COMPOUNDS OF ARSENIC:[1]

Compounds (commercial names)	*Solubility in water*
1. o-Arsenic acid, $H_3AsO_4.1/2\ H_2O$	16.7g. in 100 ml. of H_2O at 20° C; 50 percent As.
2. Arsenic trichloride, $AsCl_3$	Dissolves in H_2O and decomposes to As_2O_3 and HCl; 76 percent As.
3. Arsenic trioxide, As_2O_3 (white arsenic).	2g. in 100 ml. of H_2O at 25° C and 11.5g. in 100 ml. at 100° C; 76 percent As.
4. Arsenic pentoxide, As_2O_5 (anhydride of arsenic acid).	150g. in 100 ml. of water at 16° C; increasingly soluble with temperature rise; 65 percent As.
5. Calcium arsenate, $Ca_3(AsO_4)_2$	Slightly soluble in H_2O, soluble in dilute acids; 38 percent As.
6. Copper acetoarsenite, $3Cu(AsO_2)_2$ $Cu(COOCH_3)_2$; approximate formula (copper acetate metarsenate, Imperial, Schweinfurth, Vienna, Parrot, or Paris Green).	Insoluble in H_2O, soluble in dilute acids; 44.3 percent As.
7. Capric arsenite, $CuHAsO_3$; approximate formula. (Scheele's Green, Swedish Green).	Insoluble in H_2O and alcalead, soluble in dilute acids and in NH_4OH; 40 percent As.
8. Lead arsenate, $PbHAsO_4$	Approximate formula insoluble in H_2O, soluble in dilute HNO_3 and in caustic alkalies; 21.6 percent As; 60 percent Pb.
9. Lead arsenite, $Pb(AsO_2)_2$	Approximate formula insoluble in water, soluble in dilute HNO_3; 35 percent As; 49 percent Pb.
10. Sodium arsenite, $NaAsO_2$ (sodium metarsenite).	Very soluble in hot or cold water; 57.6 percent As.
11. Arsine, AsH_3	20 ml. in 100 ml. of H_2O at 20° C.

Commercial preparation, physical and chemical properties of arsenic

A. Commercial preparation

Arsenical pyrite, FeSAs, a mineral similar to pyrite FeS_2, but containing arsenic in place of half of the sulfur, is one of the commonest ores of arsenic. When this mineral is heated in absence of air, arsenic passes off as vapor and condenses as a crystalline metallic powder, the so-called gray arsenic. The reaction is:

$$FeSAs \longrightarrow FeS + As$$

Most other naturally occurring sulfides also contain more or less arsenic. When these ores are roasted, the metal, sulfur, and arsenic are all converted into oxides. The sulfur dioxide passes off as gas, but the arsenic trioxide, As_2O_3, settles in the flues. By distillation of the deposit with carbon, free arsenic is attained according to the following reaction:

$$As_2O_3 + 3C \longrightarrow 2As\uparrow + 3CO\uparrow$$

B. Physical and chemical properties

Arsenic is a silvery substance, but tarnishes slowly in moist air, receiving a film of white oxide, As_2O_3. The element can react as metal as well as nonmetal. Thus the free element finds little commercial utilization. The greatest use involves the trioxide, which is the source of all manufactured compounds of arsenic[2] (Ehret 1946).

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[1] Patty, F. A., "Industrial Hygiene and Toxicology." Second edition. Vol. II: Toxicology. Interscience Publishers, New York, N.Y., 1962.

[2] Ehret, W. I. Smiths' College Chemistry, 1946.

Arsenic trioxide (white arsenic, arsenious oxide, As_2O_3) is the common commercial form of arsenic. Most compounds of arsenic, when heated in air, are converted to this tasteless, toxic white powder. Arsenic metal, arsenic sulfides, arsine, arsenic oxides (in the presence of a reducing agent) and organic arsenates, are all converted by heat and oxygen to arsenic trioxide. Because trioxide sublimes at 193° C., it is easily suspended as small particles in the air. When heated, the free element burns in the air, producing white poisonous vapors of As_2O_3. Likewise, when warmed, it unites directly with the halogens (F_2, Cl_2, Bi_2, T_2), with sulfur, and with many of the metals.[3]

U.S. PRODUCTION OF ARSENIC

Sullivan (1969) summarized the production of arsenic in the United States. His summary is quoted below:

"Virtually all of the arsenic produced is recovered as a by-product in the smelting of lead, copper, and gold ores. The production of white arsenic as a by-product has been so great that the supply usually exceeds the demand. Until this year, the United States' domestic needs have been supplied by the Anaconda Co. at Anaconda, Mont., and the American Smelting and Refining Co. at Tacoma, Wash., supplemented by some imports. However, the Bureau of Mines reports that the Anaconda Co. suspended its sale of arsenic in 1968.

"In order to avoid disclosing company confidential data, the U.S. consumption or production of white arsenic has not been reported since 1959. Prior to that, the U.S. consumption varied between 13,000 and 40,000 short tons per year. The price of arsenic has declined from approximately 6.5 cents per pound to about 4 cents.

"One of the problems facing mining industries has been the disposal of the large quantities of arsenic they produce. A gold smelter in a small western town produced 14,600 tons per year, almost enough to supply all our domestic needs. These industries are also faced with the disposal of the very poisonous arsenic trioxide.

"The high volatility of arsenic trioxide (sublimes at 193° C.) requires that most arsenic-containing ores be specially treated to remove arsenic from the exhaust gases. Lead, copper, and gold ores may contain up to 3 percent arsenic. Arsenic is also a contaminant in some nickel and cadmium ores, and must be removed to improve the quality of the metal. In some processes the arsenic is removed chemically, while in others it is removed by taking advantage of the high volatility of the arsenic trioxide.

"In the commercial production of arsenic, arsenic trioxide is volatilized during the smelting process and concentrated in the flue gases. Crude flue gas dust may contain up to 30 percent arsenic trioxide, the balance being oxides of copper or lead and perhaps of other metals, such as antimony, tin, and zinc. To upgrade the flue dust, a small amount of pyrite or galena is mixed with the concentrate and the mixture roasted. The gases are finally passed through a series of brick cooling chambers called kitchens. The temperatures of the gas and vapor are controlled; they enter the first kitchen at approximately 220° C., and by the time the gas and vapor reach the last kitchen, they have been cooled to 100° C., or less. The condensed crude product is 90 to 95 percent arsenic trioxide. Resublimation at about 295° C., and recondensing in kitchens at 180 to 120° C., produce 99 to 99.9 percent arsenic trioxide.

Even in the smelters where arsenic is not recovered for commercial use, the tonages involved are very large. A reverberatory furnace, for example, may smelt as much as 2,100 tons of charge per day, and in doing so, burn 240 tons of coal. The furnace would produce about 90 million cubic feet of gas per day, containing 180 tons of solids. This means that it would be necessary to dispose of up to 60 tons of arsenic daily."

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[3] Sullivan (1969), "Preliminary Air Pollution Survey of Arsenic and Its Compounds: A Literature Review," U.S. Department of Health, Education, and Welfare, National Air Pollution Control Administration.

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APPENDIX: ARSENIC IN THE LOWER MISSISSIPPI RIVER

A preliminary survey by FWQA of certain discharges of arsenic indicates that at least 100 pounds of arsenic or arsenic compounds are discharged daily to the lower Mississippi River. Baton Rouge and points downstream from the city are the present areas of concern. Undoubtedly, still-unknown quantities of arsenic are discharged to the river from other sources. The background level of arsenic in the river above Baton Rouge is unknown and requires measurement before the industrial discharges can be fully evaluated.

The Mississippi River has minimum flows of 75,000 c.f.s. based on measurements from 1927–62. Discharge of 100 pounds of arsenic per day at periods of minimum flow would result in an overal concentration of .2 p.p.b. The calculated concentration of arsenic in the river is below the USPHS mandatory minimum level of 50 p.p.b. for drinking water or the recommended level of 10 p.p.b. The calculated level is far below drinking water standards, however other discharges, as well as the background level of arsenic in the river, must be considered.

Some forms of arsenic are readily incorporated with sediments and bottom material. The large volumes of water and heavy flows in the Mississippi would appear to carry much of this material downstream, either in association with sediments or in solution and may reach the delta and estuarine areas.

The city of New Orleans, downstream from Baton Rouge, utilizes the Mississippi River for domestic water supplies. Water from the river is also siphoned to oyster-producing areas downstream from New Orleans. It is possible that the total level of arsenic (background levels, plus discharges) could affect these beneficial uses of the river water. The arsenic in the river may also reach other shellfish areas, where the element is ingested and concentrated in shellfish tissue. Additional data are essential to evaluate these possibilities.

Estimates of arsenic concentrations for shellfish in the Mississippi estuary are not available. Little data on residues in fish from the area are available. At present, no guidelines for safe levels of arsenic in shellfish, fish or other seafoods have been established by the Food and Drug Administration. It is our understanding that such guidelines are being developed. Evaluations of contamination of shellfish and fish should include the FDA guidelines when they become available.

The data available are inadequate concerning the amount of arsenic in the Mississippi River and associated estuarine areas and the movement of the element in the river ecosystem. Further information is urgently needed in order to evaluate the effects of known and unknown discharges.

[For release Oct. 1, 1970]

DEPARTMENT OF THE INTERIOR—GEOLOGICAL SURVEY

PLAN NATIONWIDE RECONNAISSANCE FOR METALS IN SURFACE WATER RESOURCES

During the period October 1–15, 1970, hydrologists of the U.S. Geological Survey, Department of the Interior, will conduct a nationwide reconnaissance for selected metals and minor elements in the Nation's surface waters. A major target will be surface water sources of metropolitan areas.

Numerous representative "raw-water" samples will be analyzed from principal surface-water sources used for the public water supply of each city of more than 100,000 population and in several smaller cities to determine the content of arsenic, cadmium, chromium (hexavalent), cobalt, lead, zinc, and mercury.

E. L. Hendricks, chief hydrologist, U.S. Geological Survey, Washington, D.C., said that national reconnaissance is spurred by current concern about mercury and other toxic metals and minor elements in surface water.

"While many data on the occurrence of heavy metals in rivers have been collected by the Geological Survey," Hendricks said, "they do not provide all the information needed by those involved in pollution control, particularly in metropolitan areas. The new measurements will be made using strategically located stations of our national water data network, and will provide baseline data that will supplement basic information on the metal content of water gathered over the past several years."

To implement this new study, 46 district offices of the Survey's Water Resources Division covering the 50 States, Puerto Rico, and the District of Columbia will be asked to—

> Obtain raw-water samples from major local surface water sources. If the district has no city with a population of over 100,000, then the largest city in the district will be selected. Samples will be collected near the point of intake where possible; if a large lake or reservoir is the source, the samples will be taken from the intake line before the water reaches a point of storage.
>
> Obtain a well-mixed water sample, representative of the water resource downstream from major municipal or industrial complexes. These samples will be collected immediately downstream of the zone of mixing.
>
> Obtain a sample at each "hydrologic benchmark" station in each district. (Benchmark stations are part of the Survey's network established to collect data where water resources have not been affected significantly by man, and where the resources are expected to remain in a natural state. They serve as baselines for determining changes in other areas.)
>
> Obtain samples during the period when the stream is at medium- or low-flow conditions. If flow conditions are not suitable during the period October 1–15, sampling may be delayed, but will not be later than October 31.

"The water samples," Hendricks, said, "will be analyzed with the help of newly developed techniques that will allow detection of extremely small amounts of toxic metals. For example, in the case of mercury, we are now able to detect dissolved mercury concentrations as small as 1 part per 10 billion parts of water, using a technique in which mercury is collected from acidified water sample by amalgamation on a silver wire. The wire is then electrically heated in an absorption cell placed in the light beam of an atomic absorption spectrophotometer. The mercury vapors are drawn through the cell with an aspirator, and the absorption is plotted on a recorder. Universally accepted procedures also will be used for arsenic, cadmium, chromium, cobalt, lead, and zinc."

"The 'synoptic' look at trace metals in streams throughout the Nation is being done with the endorsements of several other Federal agencies," the USGS spokesman said.

"The Geological Survey is well equipped to make a special reconnaissance of this kind," Hendricks said, "because of its many district offices and laboratories and its water data network which involves all of the States."

"The U.S. Geological Survey does not manage, develop, regulate or carry out pollution control programs. Rather, it is the Survey's responsibilities—through its national network—to gather the basic hydrologic data needed by those who are attacking such problems."

"The national water data system of the USGS," Hendricks explained, "is made up of several individual networks consisting of thousands of stations designed to collect basic facts about surface water, ground water, and quality characteristics of both. The network is principally a means of monitoring the response of the hydroligic system to natural and man-made influences."

HOUSE OF REPRESENTATIVES,
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., October 8, 1970.

Mr. DAVID D. DOMINICK,
Commissioner, Federal Water Quality Administration,
Building No. 2, Crystal Plaza, Arlington, Va.

DEAR MR. DOMINICK: Thank you for your letter of September 24, 1970, in reply to our letter of July 29, 1970, concerning mercury discharged into the Nation's waterways.

Your letter states as follows:

"All States with approved water quality standards have incorporated in similar or identical form into their standards the general toxicity criteria which you have set forth in your letter:

Surface water should be free of substances attributable to discharges or wastes as follows:

(d) Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish, and other animal life and plants.

(e) Substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life.

Mercury discharged to the aquatic environment may constitute a violation of these criteria. However, as you are undoubtedly aware, the enforcement procedures under 10(c)(9) of the Federal Water Pollution Control Act do not provide for immediate injunctive relief. For this reason, alternative injunctive relief under the Rivers and Harbors Act of 1899 was sought in the 10 cases referred to the Justice Department."

In view of the extreme toxicity of mercury to human and other life, it would seem that every one of the dischargers listed in the attachment to your letter was, in fact, violating the foregoing criteria. Moreover, the Department of Justice, in each of the complaints it filed against 10 of the 50 dischargers, stated as follows:

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

Thus, even if any discharger had had a corps permit (and apparently none had), each discharger of the 50 dischargers was also violating the Refuse Act.

I.

Please advise us why you "referred to the Justice Department" only "ten cases," and did not refer all 50 cases.

II.

We note that the 10 polluters against whom suits were instituted discharged mercury as follows:

	Pounds of mercury discharged on 1st date mentioned in your attachment	Pounds of mercury discharged on in date mentioned 2n your attachmetd after company reduced its load
Allied	4.4	
Diamond	29.1	3.03
Do	8.6	3.25
Georgia	10.5	.17
International	2.65	.22
Olin	12.29	.51
Do	26.6	.38-.85
Oxford	26.2	(1)
Pennwolt	1.54	
Weyerhauser	15.1	1

[1] Plant closed.

If you moved against these polluters on the basis of the size of their discharges, why did you not recommend suit against the following dischargers whose discharges were as follows:

	Pounds of mercury discharged on 1st date mentioned in your attachment	Pounds of mercury discharged on 2d date mentioned in your attachment after company reduced its load
PPG	4.0	0.5-1
Riegel Paper	6.32	.59
Aluminum		1.96-1.45
Hooker	1.32	(1)
Chesbrough	1.5	

[1] Company will report improvement [on] Sept. 18.

III.

Your letter states that you instituted a section 10(c)(5) water quality standards proceeding against GAF Corp., rather than a Refuse Act suit. Yet GAF was discharging 29.2 pounds mercury on July 17, and "reduced load" of 6.7 pounds on August 7, 1970, both discharges substantially in excess of those by several of the companies against whom you recommended Refuse Act suits.

Yet the section 10(c)(5) procedures, as you correctly stated, "do not provide for immediate injunctive relief" whereas such relief is available under the Refuse Act.

Please advise why GAF was given different, and apparently more lenient, treatment.

IV.

We understand that the Government, with your concurrence, "settled" five of the 10 suits, under terms which allow continued discharge of reduced loads of mercury.

Please advise us as follows:

(a) In view of the fact that mercury discharges violate both the water quality standards and the Refuse Act, what is the legal basis for such "settlements?"

(b) Why did the Government "settle" these cases rather than obtain an injunction to insure cessation of the mercury discharges?

(c) With respect to each of the "settled" cases, precisely when will each discharger cease emitting mercury?

V.

Your letter states:

"Since prosecutorial referrals to the Justice Department may be made directly by the Interior Department, corps referrals have not been employed because of the need for immediate action and the desire to avoid complications."

You are, of course, correct that Interior can refer cases for action under the Refuse Act directly to the Justice Department, and we applaud your so referring 10 of the 50 cases. But the corps has the duty of requiring dischargers to obtain permits under that act. The corps, which is short of manpower, would certainly have appreciated receiving the information you developed.

Please advise us as follows:

1. Why did you not refer the 50 cases to the corps for its appropriate action with regard to its duty to require permits?

2. (a) Do the settlements provide that any continuing mercury discharge must require a corps' permit?

(b) If not, why not?

3. Please advise us when you transmit these 50 cases to the corps.

4. What is meant by the phrase "the desire to avoid complications" in your sentence quoted above?

Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

U.S. DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

(Civil action No. ———)

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ALLIED CHEMICAL CORPORATION, DEFENDANT.

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Allied Chemical Corp. from discharging mercury or mercury compounds into Onondaga Lake, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above named act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Allied Chemical Corp., is a corporation doing business in the State of New York.

III

Defendant, in the operations of its plant at Solvay, N.Y., is and has been discharging effluent wastes on a daily and continuous basis into the waters of Onondaga Lake. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of Onondaga Lake constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

Onondaga Lake is a navigable water of the United States within the meaning of section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in paragraph III above constitute a present and continuing violation of section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys, Land and Natural Resources Division,
Department of Justice,
Washington, D.C. 20530.
By: ——— ———,
United States Attorney.
Attorneys for the Plaintiff.

ALLIED CHEMICAL CORP., SOLVAY, N.Y.

On September 15, 1970, the company agreed to the entry of a stipulation in the case providing that the company's two plants were to discharge less than one-half pound per day each on a weekly combined average and that the company was to further reduce its mercury discharges where possible and to submit a plan by December 1, 1970, outlining steps to further reduce discharges. A copy of the stipulation is attached.

U.S. DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

(Civil action No. 70-CV-256—Stipulation)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ALLIED CHEMICAL CORPORATION, DEFENDANT

It is stipulated by the attorneys for the parties in this action that the plaintiff's application for a preliminary injunction and the trial of the action be adjourned until December 7, 1970, or until such date after that as the Court may fix.

This stipulation and adjournment is made upon these conditions:

1. The defendant shall, by September 15, 1970, reduce the average total net discharge of mercury from its two chlorine plants in Solvay, N.Y. into the Onondaga Lake or any other navigable water of the United States, or tributary thereof, to an amount not more than the equivalent of 8 ounces per day per plant from its said chlorine plants:

2. The defendant shall thereafter continue to make all efforts further to reduce the total discharge of mercury from its said chlorine plants into the Onondaga Lake, or any other navigable water of the United States, or tributary

thereof, and on or before December 1, 1970, defendant shall submit to plaintiff a proposed schedule of future reductions of mercury discharge from said plants;

3. The defendant shall measure or cause to be measured daily the mercury content of its effluent from its said chlorine plants and no less often than each period of 7 consecutive days shall send by mail to the United States Attorney at Federal Building, Syracuse, N.Y., and also to the Great Lakes Regional Office, Federal Water Quality Administration, 4664 Lake Avenue, Rochester, N.Y., or its successor in interest, the daily readings covering the 7-day period ending on the prior day; the daily average shall be computed for the purposes of paragraph 1 above upon the basis of a 21-consecutive-day period;

4. The defendant shall permit, at any time that its said chlorine plants are in operation, employees and agents of the plaintiff to enter upon the premises here involved to measure or to cause to be measured daily the mercury content of the effluent being discharged into the Onondaga Lake or any other navigable water of the United States, or tributary thereof;

5. Should the amount of mercury in the defendant's effluent not be reduced to the average total amount set forth in paragraph 1, or should the amount of mercury at any time exceed such amount (except in isolated cases of accidental discharges), or should the plaintiff decide that its consent to this stipulation should be withdrawn, then the plaintiff may bring on for determination its pending application for a preliminary injunction upon not less than 5 days' written notice to defendant through its attorneys herein:

6. This stipulation is without prejudice to the claims of either party with respect to any issue in this action, including the demand of plaintiff set forth in paragraph No. 2 of plaintiff's prayer for relief set forth in the complaint.

7. This stipulation and any order hereon shall not preclude plaintiff from bringing any future action under the Refuse Act with respect to substances other than mercury or its compounds discharged by the defendant's said plants into the navigable waters of the United States.

Done this ——— day of September, 1970.

UNITED STATES OF AMERICA,
By: ———————————,
U.S. Attorney.
BOND, SCHOENECK & KING,
By: ———————————,
Attorneys for Defendant, Allied Chemical Corp.

U.S. DISTRICT COURT, DISTRICT OF DELAWARE

Civil action No. ——

UNITED STATES OF AMERICA, PLAINTIFF

v.

DIAMOND SHAMROCK CORP., DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Diamond Shamrock Corp., from discharging mercury or mercury compounds into the Delaware River, a navigable water of the United States, in violation of section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. sec. 407). Authority to bring this action is vested in the Department of Justice by section 17 of the above-named act (30 Stat. 1153, 33 U.S.C. sec. 413).

II

Defendant, Diamond Shamrock Corp., is a corporation doing business in the State of Delaware.

III

Defendent, in the operations of its plant at Delaware City, Del., is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Delaware River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Delaware River constitute prohibited discharges of "refuse matter" within the meaning of section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. sec. 407). This act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Delaware River is a navigable water of the United States within the meaning of section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in paragraph III above constitute a present and continuing violation of section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences

from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys, Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ——————————.
United States Attorney.
Attorneys for the Plaintiff.

DIAMOND-SHAMROCK CORP., DELAWARE CITY., CHLOR-ALKALI PLANT

As of August 26, 1970, the firm alleged that it was discharging less than 1.7 pounds of mercury per day to the Delaware River.

A meeting held September 4, 1970, resulted in no progress toward settlement. However, at a subsequent meeting at Justice on September 28, 1970, the company agreed to the entry of a stipulation providing that the firm is to reduce its mercury discharges to one-half pound or less per day on a weekly average by October 1, 1970, except that if tests indicate residual mercury in the sewer system of the plant increases the discharge above one-half pound per day, the company will be given an additional 30 days to correct the situation or replace the sewer system. The company also agreed to make efforts to reduce its mercury discharges to less than one-half pound per day and to submit a plan to Justice on or before December 1, 1970, indicating efforts to further reduce discharges. The stipulation was entered in court on September 29, 1970; a copy is not yet available.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA

Civil Action No. ——

UNITED STATES OF AMERICA, PLAINTIFF

v.

DIAMOND SHAMROCK CORPORATION, DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Diamond Shamrock Corporation from discharging mercury or mercury compounds into Pond Creek, a tributary of the Tennessee River, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above-named Act (30 Stat. 115[illegible], 33 U.S.C. Sec. 413).

II

Defendant, Diamond Shamrock Corporation, is a corporation doing business in the State of Alabama.

III

Defendant, in the operations of its plant at Muscle Shoals, Alabama, is and has been discharging effluent wastes on a daily and continuous basis into the waters of Pond Creek. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of Pond Creek constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

Pond Creek is a tributary of the Tennessee River, which is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

WHEREFORE, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, JR.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ————————,
United States Attorney.
Attorneys for the Plaintiff.

U.S. DISTRICT COURT WESTERN DISTRICT OF KENTUCKY

Civil Action No ——

UNITED STATES OF AMERICA, PLAINTIFF

v.

PENNWALT CHEMICAL CO., DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Pennwalt Chemical Co. from discharging mercury or mercury compounds into the Tennessee River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above-named Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Pennwalt Chemical Co., is a corporation doing business in the State of Kentucky.

III

Defendant, in the operations of its plant at Calvert City, Kentucky, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Tennessee River. Said effluent wastes contain significant quantities of mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Tennessee River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *"

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Tennessee River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuiing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ——————————,
United States Attorney.
Attorneys for the Plaintiff.

U.S. DISTRICT COURT, DISTRICT OF MAINE

Civil Action No. ——

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINING AND CHEMICAL CO., DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant International Mining and Chemical Co., from discharging mercury or mercury compounds into the Penobscot River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the abovenamed Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, International Mining and Chemical Co., is a corporation doing business in the State of Maine.

III

Defendant, in the operations of its plant at Orrington, Maine, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Penobscot River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Penobscot River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by his, provided application is made to him prior to depositing such material. * * *"

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Penobscot River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ——————————,
United States Attorney.
Attorneys for the Plaintiff.

INTERNATIONAL MINERALS AND CHEMICAL CHLOR-ALKALI COMPANY, ORRINGTON, MAINE

At a meeting held September 17, 1970, at the Justice Department, IMC officials agreed to the entry of a stipulation in the case. The stipulation provides that IMC is to discharge less than ½ lb. mercury per day to the Penobscot River, that the firm is to make efforts to further reduce mercury discharges, and is to submit a report on or before December 1, 1970, outlining a program for further reductions. The decree was entered on September 18, 1970, a copy of which is attached.

U.S. DISTRICT COURT, DISTRICT OF MAINE

Civil Action No. 1842

UNITED STATES OF AMERICA, PLAINTIFF

v.

IMC CHLOR-ALKALI, INC, DEFENDANT

STIPULATION

It is stipulated by the attorneys for the parties in this action that the plaintiff's application for an injunction and other proceedings in the trial of this action be adjourned until the 14th day of December, 1970, or until such date after that as the Court may fix.

The stipulation and adjournment is made upon the following conditions:

1. The plaintiff, at the request of the Secretary of the Interior, filed this suit on the 27th day of July, 1970, incorrectly naming International Mining & Chemical Co. as defendant. On the 21st day of August, 1970, plaintiff amended the complaint and made IMC Chlor-Alkali, Inc., the defendant. The amended complaint is a civil action to enjoin the defendant from discharging mercury, or mercury compounds, into the Penobscot River, and alleges violation of Section 13 of the Rivers and Harbors Act of 1899. The amended complaint sought an injunction. On September 14, the defendant filed an answer denying material allegations of the complaint, and denying that the plaintiff was entitled to the injunctive relief sought by the amended complaint. On August 18th and 19th, representatives of the FWQA took water samples, the results of which showed that the discharge from the company's plant according to the samples contained only 0.145 lbs. of mercury per day. On the same day, the defendant took similar samples, and the results furnished to the plaintiff showed that the amount of discharge was approximately 0.2402 lbs. per day, and when samples from intake water which showed 0.0206 lbs. per day are deducted from this amount, the results showed a discharge of 0.2196 lbs. per day chargeable to the plant operation according to the sample result. Since that time the defendant has sampled regularly, and the result of the samples have been furnished to the plaintiff. The result of samples show that the discharge of mercury in the effluent has been substantially reduced from 3.86 pounds per day, as measured by the FWQA, on July 14–15, 1970. Recent samples show continued reduced levels of discharge.

The defendant has shown much progress in the reduction of the discharge of mercury from its chlorine plant into the Penobscot River, and has agreed to make reasonable effort to continue to limit the discharge from its plant.

2. The defendant shall continue to make reasonable effort to further reduce its total discharge of mercury from its chlorine plant into the Penobscot River, or any other navigable waters of the U.S., or tributary thereof, and on or before the 1st day of December, 1970, the defendant shall submit to plaintiff the result of its work now being done and its further plans to reduce and limit mercury discharge from its plant into the Penobscot River.

3. Defendant shall take samples daily, and measure or cause to be measured the mercury content of its water effluent from its said chlorine plant being discharged into the Penobscot River, and once each week (seven consecutive days) shall mail to the U.S. Attorney, 156 Federal St., Portland, Me. 04112, and also to the Northeast Regional Office, Federal Water Quality Administration, Room 2303, John F. Kennedy Federal Office Building, Boston, Mass. 02203, or its successor in interest, the composite readings covering the seven-day period ending on the prior day.

4. The defendant shall permit at any reasonable time, that its plant is in operation, employees and agents of the plaintiff to enter upon the premises to measure or cause to be measured the mercury content of the effluent being discharged into the Penobscot River, or any other navigable waters of the United States, or tributary thereof; provided that at any time employees and agents of the plaintiff desire to enter upon the premises that they shall give the plant manager or defendant representative in charge of the plant reasonable notice.

5. Should the amount of mercury in defendant's effluent exceed eight ounces per day (except in isolated cases of accident discharge) or should the plaintiff decide that its consent to this stipulation should be withdrawn, then the plaintiff may request a hearing on its pending application for preliminary injunction upon not to exceed Ten (10) days written notice to the defendant through its attorneys herein.

6. This stipulation is without prejudice to the claims of either party with respect to any issue in this action, including the demand of plaintiff set forth in paragraph 2 of the plaintiff's prayer for relief set forth in the complaint: and including the denials of the defendant's made in its answer to the amended complaint.

7. This stipulation and order shall not prevent plaintiff from bringing future actions under the Refuse Act with respect to substances other than mercury or its compounds.

This 17th day of September, 1970.

By: PETER MILLS,
U.S. Attorney, Portland, Maine.
MACFARLAND, COLLEY, BLANK & JACK,
Attorneys at Law, Columbia, Tenn.
MITCHELL & BALLOU,
Attorneys at Law, Bangor, Maine.
By: LON P. MACFARLAND,
Attorneys for defendant, IMC Chlor-Alkali, Inc.

U.S. DISTRICT COURT, DISTRICT OF MAINE

Civil Action No. ——

UNITED STATES OF AMERICA, PLAINTIFF

v.

OXFORD PAPER COMPANY, DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Oxford Paper Company from discharging mercury or mercury compounds into the Androscoggin River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above-named Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Oxford Paper Company, is a corporation doing business in the State of Maine.

III

Defendant, in the operations of its plant at Rumford, Maine, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Androscoggin River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Androscoggin River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; * * * *provided further,* That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Androscoggin River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

Shiro Kashiwa,
Assistant Attorney General.
Walter Kiechel, Jr.,
Deputy Assistant Attorney General.
Martin Green,
Thomas C. Lee,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ____________,
United States Attorney.
Attorneys for the Plaintiff.

U.S. District Court, Southern District of Georgia

United States of America, plaintiff

v.

Olin Mathieson Chemical Corporation, defendant

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Olin Mathieson Chemical Corporation from discharging mercury or mercury compounds into the Savannah River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the abovenamed Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Olin Mathieson Chemical Corporation, is a corporation doing business in the State of Georgia.

III

Defendant, in the operations of its plant at Augusta, Georgia, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Savannah River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Savannah River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, warf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Savannah River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

Wherefore, the United States prays:

(1) That a decree be entered enjoining defendant forwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General,
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: ————————,
United States Attorney.
Attorneys for the Plaintiff.

United States District Court, Western District of New York

Civil action No. ———

UNITED STATES OF AMERICA, PLAINTIFF

v.

OLIN MATHIESON CHEMICAL CORP., DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Olin Mathieson Chemical Corporation from discharging mercury or mercury compounds into the Niagara River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the abovenamed Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Olin Mathieson Chemical Corporation, is a corporation doing business in the State of New York.

III

Defendant, in the operations of its plant at Niagara Falls, New York, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Niagara River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Niagara River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, * * * *provided further,* That the Secretary of the Army, whenever in the judgment of the

Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within ilmits to be defined and under conditions to be prescribed by him provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

IV

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Niagara River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

WHEREFORE, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys, Land and Natural Resources Division,
Department of Justice, Washington, D.C.
By: ——————————,
U.S. Attorney,
Attorney for the Plaintiff.

OLIN CORP., NIAGARA FALLS, N.Y., CHLOR-ALKALI PLANT

The case was heard in U.S. District Court, Buffalo, New York before Judge Henderson on September 3 and 4; September 8 and was concluded on September 21, when the company agreed to the entry of a stipulation. The stipulation provides that the plant will discharge less than one-half lb/day of mercury computed on a 21-day average. The company will make efforts to further reduce its mercury and is to submit a plan by December 1, 1970, on further reductions.

The Government's case survived preliminary dismissal on jurisdictional grounds and the judge reserved ruling on defendant's motion for preliminary judgment at the close of the plaintiff's case until defendant presented its evidence.

The stipulation was entered in court on September 21, 1970; a copy is attached. A transcript of the hearing will be available to Interior shortly.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 1970–338

UNITED STATES OF AMERICA, PLAINTIFF

v.

OLIN CORP., DEFENDANT

STIPULATION

The United States of America, the plaintiff in the above action, without prejudice to its right at a later time, as hereinafter set forth, to pursue all the remedies legally available to it, and Olin Corporation, the defendant in the above action, without preujdice to its right at any time in this action to assert any defenses, jurisdictional or otherwise, available to it in this matter, hereby stipulate as follows:

(1) More than three months prior to the institution of this action, Olin Corporation instituted a crash program to reduce the amount of mercury discharged in the effluent from its plant at Niagara Falls, New York and has succeeded in reducing such amount to an average of less than one-half pound per day, and, in cooperation with the plaintiff, is continuing its efforts to reduce such amount even further;

(2) Olin Corporation will continue to maintain an average daily discharge of less than one-half pound per day of mercury in the waste water from its plant at Niagara Falls, New York;

(3) On or before December 1, 1970, defendant shall submit to plaintiff a proposed schedule of future reductions of mercury discharge from said plant;

(4) The defendant shall measure or cause to be measured daily the mercury content of its effluent from its said chlorine plant and no less often than each period of seven consecutive days shall send by mail to the Great Lakes Regional Office, Federal Water Quality Administration, 4664 Lake Avenue, Rochester, New York, or its successor in interest, the daily readings covering the seven day period ending on the prior day; the daily average shall be computed for the purposes of Paragraph 2 above upon the basis of a twenty-one (21) consecutive-day period;

(5) The defendant shall permit, at any time that its said chlorine plant is in operation, employees and agents of the plaintiff to enter upon the premises here involved to measure or to cause to be measured daily the mercury content of the effluent being discharged provided that the results thereof shall promptly be made available to defendant;

(6) Should the amount of mercury discharge from defendant's Niagara Falls plant at any time exceed the amount specified in Paragraph 2 above (except in isolated cases of accidental discharges resulting from loss of power or malfunctioning of equipment), then the plaintiff may bring on for determination its pending application for a preliminary injunction upon not less than five (5) days' written notice to defendant through its attorneys herein.

Dated this 21st day of September, 1970.

H. KENNETH SCHROEDER, JR.,
U.S. Attorney,
Counsel for Plaintiff.
RUNALS, BRODERICK, SHOEMAKER,
RICKERT, RUNALS & BERRIGAN,
CLARENCE R. RUNAL.
Attorneys for Defendant.

United States District Court, Western District of Washington

Civil Action No.

United States of America, plaintiff

v.

Georgia-Pacific Corp., defendant

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Georgia-Pacific Corporation from discharging mercury or mercury compounds into Bellingham Bay, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C. Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above-named Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Georgia-Pacific Corporation, is a corporation doing business in the State of Washington.

III

Defendant, in the operations of its plant at Bellingham, Washington, is and has been discharging effluent wastes on a daily and continuous basis into the waters of Bellingham Bay. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of Bellingham Bay constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

> It shall not be lawful to throw, discharges, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

Bellingham Bay, which is an arm of Puget Sound, is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

The acts of the defendant described in paragraph III above constitute a present and continuing violation of section 13 of the Rivers and Harbors Act.

WHEREFORE, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHYWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys.
Land and Natural Resources Division,
Department of Justice,
Washington, D.C., 20530.
By: ——— ———,
United States Attorney.
Attorneys for the Plaintiff.

GEORGIA PACIFIC CORP., BELLINGHAM, WASH.

A meeting held at the Justice Department on September 28, 1970, resulted in the company's agreement to enter a stipulation in the case. The stipulation provides that the company is to discharge no more than ½ lb/day of mercury from its chlor-alkali plant on a weekly average, to make efforts to reduce its mercury discharges to below ½ lb/day and to submit a plan on or before December 1, 1970, describing efforts to further reduce its discharges.

The stipulation, however, covers only mercury discharged fom its chlor-alkali plant. The principal source of mercury is presently its pulp and paper operations—which are contributing about 1.06 lbs/day as of August 27, 1970, (the chlor-alkali plant was discharging about .17 lbs/day on the same date).

The company agreed to submit a program for reduction of mercury in the effluent from these operations as part of its December 1, 1970, submission.

Georgia Pacific officials allege that the FWQA sampling results on the pulp and paper operations are too high, that it is not possible to accurately measure the amount of mercury in this effluent because of high suspended solid content and that a large proportion of the mercury comes from the trees it uses and its water intake.

The stipulation has not yet been entered in court; copies are not yet available.

In the District Court of the United States for the Western District of Washington at Seattle

UNITED STATES OF AMERICA, PLAINTIFF
v.
GEORGIA-PACIFIC CORP., DEFENDENT

No. 330, stipulation

It is stipulated by the attorneys for the parties in this action that the plaintiff's application for injunction and other proceedings in connection with this matter be adjourned until the fourth day of December 1970 or until such date after that as the Court may fix.

This stipulation and adjournment is made on the following conditions:

1. The complaint initiated a civil action brought at the request of the Secretary of Interior seeking to enjoin defendant from discharging mercury from its plant in Bellingham, Washington.

2. The defendant has answered the complaint denying its material allegations and denying that the plaintiff is entitled to the relief sought by the complaint.

3. On August 10, 11 and 12, representatives of the Federal Water Quality Administration, from water samples taken by them, reported an average of .33 pound of mercury per day was being discharged from defendant's chlor-alkali facility. Defendant's samples taken from August 20 through September 20, 1970, indicate the normal daily discharge of mercury from defendant's chlor-alkali facility to be .47 pound per day. None of the foregoing samples make allowance for any mercury which may come into defendant's plant from its supply water or other natural sources. Analyses of defendant's effluent indicate that defendant's discharge of mercury from defendant's chlor-alkali facility has been reduced to the present levels from approximately 10.5 pounds a day on July 14, 1970. Such reduction resulted from defendant's installation of a mercury recovery system which was completed July 23, 1970. This system was engineered during the last months of 1969 and the required parts and equipment were ordered commencing in November 1969, and work on installation progressed phase by phase until the system was completed on July 23, 1970.

4. Defendant will continue to make reasonable efforts to further reduce its total discharge of mercury into Bellingham Bay, and will maintain a discharge level of not more than 0.5 pounds per day from its chlor-alkali facility. On or before December 1, 1970, defendant will submit to plaintiff a description of any additional work it has done to that date and its further plans to reduce and limit mercury discharge from its plant into Bellingham Bay.

5. Defendant will take daily samples of the mercury content of the effluent from its plant being discharged into Bellingham Bay, and will once each 31 days, mail to the U.S. Attorney, Federal Building, Seattle, Washington, readings of the composite samples covering such period. Copies will also be mailed to the Regional Office, Federal Water Quality Administration in Portland, Oregon.

6. Employees and agents of the plaintiff may at any reasonable time, enter plaintiff's premises to measure mercury content in defendant's effluent being discharged into Bellingham Bay, provided such employees and agents adequately identify themselves and give reasonable notice to defendant's plant manager or his designated representative.

7. If the amount of mercury in defendant's effluent from its chlor-alkali facility should exceed 8 ounces per day, computed upon a daily average over any period of 21 consecutive days, (except in isolated cases resulting from accidental discharge) or should the plaintiff decide that its consent to this stipulation should be withdrawn, then the plaintiff may request that the hearing on a motion for preliminary injunction or its complaint be held after ten days written notice to the defendant's attorneys herein.

8. This stipulation is without prejudice to the claims or either party with respect to any issue in this action, including the demand of paragraph 2 of plaintiff's prayer for relief, and including the denials of the defendant made in its answer to the complaint.

9. This stipulation and any order entered hereon shall not prevent plaintiff from bringing future actions under the Refuse Act with respect to substances other than mercury or its compounds.

Dated this —— day of September, 1970.

STAN PITKIN,
U.S. Attorney.
LANE, POWELL, MOSS & MILLER,
Attorneys for Defendant, Georgia-Pacific Corp.

United States District Court, Western District of Washington

Civil Action No.

UNITED STATES OF AMERICA, PLAINTIFF

v.

WEYERHAEUSER CO., DEFENDANT

COMPLAINT

The United States of America, by its undersigned attorneys, by authority of the Attorney General and at the request of the Secretary of the Interior, alleges that:

I

This is a civil action to enjoin defendant Weyerhaeuser Company from discharging mercury or mercury compounds into the Columbia River, a navigable water of the United States, in violation of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152, 33 U.S.C., Sec. 407). Authority to bring this action is vested in the Department of Justice by Section 17 of the above-named Act (30 Stat. 1153, 33 U.S.C. Sec. 413).

II

Defendant, Weyerhaeuser Company, is a corporation doing business in the State of Washington.

III

Defendant, in the operations of its plant at Longview, Washington, is and has been discharging effluent wastes on a daily and continuous basis into the waters of the Columbia River. Said effluent wastes contain significant quantities of mercury or mercury compounds suspended or in solution.

IV

Defendant's discharges of mercury or mercury compounds into the waters of the Columbia River constitute prohibited discharges of "refuse matter" within the meaning of Section 13 of the Rivers and Harbors Act of 1899 (30 Stat. 1152; 33 U.S.C. Sec. 407). This Act provides:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited * * * from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * * *provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be impeded thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material. * * *

V

Defendant has never applied for and does not now hold the statutorily required permit from the Chief of Engineers to discharge refuse matter into navigable waters of the United States.

VI

Mercury and mercury compounds are toxic substances, and, therefore, are not and could not be within the scope of any statutorily required permit issued by the Chief of Engineers.

VII

The Columbia River is a navigable water of the United States within the meaning of Section 13 of the Rivers and Harbors Act.

VIII

The acts of the defendant described in Paragraph III above constitute a present and continuing violation of Section 13 of the Rivers and Harbors Act.

WHEREFORE, the United States prays:

(1) That a decree be entered enjoining defendant forthwith from discharging any mercury or mercury compounds in any form into the navigable waters of the United States or tributaries thereof.

(2) That defendant be directed to take such affirmative action as the court determines to be required in order to eliminate any continuing consequences from defendant's previous unlawful discharges of mercury or mercury compounds into the navigable waters of the United States or tributaries thereof.

(3) For such other relief as may be appropriate in the circumstances.

SHIRO KASHIWA,
Assistant Attorney General.
WALTER KIECHEL, Jr.,
Deputy Assistant Attorney General.
MARTIN GREEN,
THOMAS C. LEE,
Attorneys,
Land and Natural Resources Division,
Department of Justice,
Washington, D.C.
By: __________________,
U.S. Attorney,
Attorneys for the Plaintiff.